

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY

George C. James, Jr., Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

ARTHUR MOSELEY,

APPELLANT

APPELLATE CASE NO. 2014-000199

RECORD ON APPEAL

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ACCORDING TO THE ORDER OF DECEMBER 10, 2015, BY CHIEF JUDGE JOHN FEW THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH EVALUATION ON COMPETENCY TO STAND TRIAL AND MENTAL HEALTH EVALUATION ON CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM CONDUCT ARE MARKED AS NON-PUBLIC SO THEY MAY NOT BE ACCESSED ON THE COURT'S WEBSITE.

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>

No Exhibits Introduced.

1 MS. BARR: Your Honor, this is indictment
2 2007-GS-45-52. It is an indictment for murder, attempted
3 armed robbery, possession of a weapon during the commission
4 of a violent crime, and criminal conspiracy.

5 Your Honor, the case is scheduled for trial next week,
6 beginning with jury selection at 10 AM on Monday the 27th.
7 I was contacted by Ms. Deborah Butcher, who represents the
8 defendant. She told me that she had a couple of motions
9 that she wanted to make prior to next week so that we would
10 know in some form or fashion how we would proceed next
11 week. And so, Judge, at this time I just turn it over to
12 her to make whatever motion she deems appropriate.

13 THE COURT: All right, Ms. Butcher.

14 MS. BUTCHER: Thank you, Your Honor. Your Honor, I
15 would like to make a motion to continue the trial of this
16 case. I was actually appointed to represent Mr. Moseley at
17 the end of July. At that time, there was an evaluation
18 pending. I had to wait on that.

19 This is 2001 murder case; it was a cold case. I then
20 got the funding for an investigator. That didn't occur
21 until November 27th. Of course, I waited till the
22 evaluation came back so we wouldn't waste funds.

23 Your Honor, my investigator, he -- there's, there's a
24 lot to do in this case. He has -- he's investigating the
25 original investigation, which you can imagine is now

1 thirteen years old. There has just not been enough time, I
2 believe, to fully investigate the issues that surround this
3 case. We're discovering there were missing statements that
4 were made early on in the investigation, and what's made it
5 more difficult, Your Honor, is an eyewitness for this crime
6 we are still in the process of tracking down.

7 Your Honor, we would just -- we just need more time,
8 and I believe that, you know, as far as justice goes, my
9 client deserves more time for this to be investigated, and
10 we would ask for this to be continued, Your Honor.

11 THE COURT: All right. Is that your only motion?

12 MS. BUTCHER: No, Your Honor. The other motion I have
13 is to be relieved as counsel. My client has reported me to
14 the Office of Disciplinary Counsel, and I think a lot of it
15 is he has some motions that he has wanted to make that I
16 have not made on his behalf for reasons I just don't feel
17 they are ripe. So, just in light of that, Your Honor, I
18 would make a motion to be relieved.

19 THE COURT: All right, Mr. Moseley.

20 DEFENDANT: Yes, sir. I would like -- I have this
21 written down because I did several motions. I did a motion
22 to dismiss and a motion to rescuse [sic], Judge, in which
23 Amanda Shuler at the time was my counselor. Did not, did
24 not move the motion, which violated my Fourteenth
25 Amendment. I redid the motion on -- I filed it on July the

1 3rd 2013. She was my counselor by then at that time. The
2 motion has still not been filed. The solicitor has a copy.
3 The Supreme Court has a copy. I wrote you about this also,
4 sir, and I move also for you as well as her to rescuse
5 yourself off of the case, being that y'all are defendants
6 in my civil injunction.

7 THE COURT: Say that, say it again.

8 DEFENDANT: I move for you and her to rescuse yourself
9 off of the case.

10 THE COURT: Recuse?

11 DEFENDANT: Rescuse, yes, sir.

12 THE COURT: Recuse.

13 DEFENDANT: Recuse.

14 THE COURT: Recuse.

15 DEFENDANT: However you pronounce it, sir.

16 THE COURT: Well, it's only one way to pronounce it.

17 DEFENDANT: Because it's a conflict of interest being
18 that you are the defendant in my civil injection case,
19 which is on the appeals court as of this time.

20 THE COURT: Defendant in a civil ---

21 DEFENDANT: For false imprisonment. I've been
22 incarcerated because I have mental evaluations, sir. I
23 went to a psychiatric ward at MUSC. You have the documents
24 showing that. Y'all have received the fax, sir. You have
25 me incarcerated for good in thirteen -- thirteen days

1 later. I mean, for real. You violating Americans with
2 Disability Act, sir. It's, it's not right, sir. I mean,
3 the paper right here, sir. I mean, I'm quite sure you have
4 a copy of it. It's a conflict of interest.

5 THE COURT: Say again.

6 DEFENDANT: It's a conflict of interest.

7 THE COURT: All right.

8 DEFENDANT: And y'all are violating my speedy trial
9 rights, 13-61(b). I have thirty days from indictment. The
10 indictment was thirteen months late, sir. Indictment
11 wasn't till July 2007, sir. 13-61©), seventy days for a
12 speedy trial, speedy trial, sir.

13 Mr. Barr then pushed me one, may he rest in peace,
14 sir. It's eight years later, and y'all won't take my
15 motion to dismiss. I, I put it in. I'm moving to push
16 this on, motion to dismiss right now, sir. It's right
17 here, sir, which you can't force me to violate the speedy
18 trial act. I can't revoke my right to pretrial motions,
19 and she hasn't done nothing, Amanda Shuler hasn't done
20 nothing, and it's a conspiracy, sir. That's all I have to
21 say.

22 THE COURT: All right. Very good.

23 Ms. Barr.

24 MS. BARR: Your Honor, with regard to Ms. Butcher's
25 motion for a continuance, what I would like to know and am

1 curious to know. If she maintains that there are
2 statements missing, she can identify which statements she
3 believes are missing, we'll be happy to make sure that she
4 has that information.

5 Rule 5 disclosure was initially made by the state in
6 October of 2007, and it was some forty-two separate
7 documents that were given to Mr. Moseley's then counsel of
8 record, Verdell Barr. After Verdell Barr was relieved as
9 counsel in October -- I'm sorry, in January of 2013, Ms.
10 Amanda Shuler of the public defender's office was appointed
11 to represent Mr. Moseley, and my belief is that Mr. Barr
12 then gave those documents to Ms. Shuler.

13 At some point in time, I believe that Mr. Moseley may
14 have made the same type allegations that he's now making
15 against his current counselor against Ms. Shuler, and so,
16 therefore, she was relieved as counsel of record and Ms.
17 Butcher was -- graciously agreed to, to represent the
18 defendant in this case. And so I'm assuming that Ms.
19 Shuler also transferred the files into -- to Ms. Butcher.

20 But I know what I provided to Mr. Barr, and if there
21 are documents or statements that she feels that she does
22 not have, I'll be happy to supplement those to the extent
23 that Rule 5 or Brady requires me to do so. I'll be happy
24 to give those to her.

25 In addition, she has indicated that an eyewitness

1 cannot be located. She provides me the name of that
2 eyewitness she believes cannot be located, I can certainly
3 have law enforcement to attempt to subpoena that
4 individual, have him or her present in court. We still
5 have a little less than a week to get that person under
6 subpoena. So, I don't believe that that will be a problem.

7 And, Judge, as it relates to her motion to be relieved
8 as counsel, this obviously is a modus operandi for the
9 defendant in terms of every time his case gets called for
10 trial, then he files some sort of complaint against me or
11 against his lawyers or whomever. And it seems to me it's
12 an attempt by the defendant to try to delay the trial of
13 the case. And at the same time out the other side of his
14 mouth argues that the state has somehow denied him his
15 right to a speedy trial. Can't have it both ways, Your
16 Honor, I would respectfully submit to the court.

17 Judge, we are prepared to try the case if we have to
18 go to trial next week. Any concerns that counsel may have
19 in terms of witnesses or statements that she doesn't have,
20 I'll be happy, to the extent that I can, to make sure that
21 those concerns are adequately addressed.

22 Your Honor, as it relates to Mr. Moseley's motion
23 regarding Your Honor's -- his request to recuse Your Honor
24 from the trial of the case and recuse me, as he says, from
25 prosecuting the case, Judge, we've got it scheduled for

1 trial before Judge James next week. So, I think the issue
2 regarding whether or not you'll hear the trial of the case
3 at this point is moot unless Judge James or unless you
4 continue it beyond next week.

5 Judge, as it relates to his motion asking that I not
6 prosecute the case because I'm a defendant in some -- and I
7 don't even know. What I understood him to say some civil
8 rights lawsuit or something. Judge, if that's, in fact,
9 the case, this is the first I'm hearing about it. I
10 certainly hadn't been served with any type of lawsuit.

11 But in any event, Judge, the state is ready to go to
12 trial. We recognize that the case has been pending for a
13 while, although I would say it is a 2001 murder. The
14 defendant was not arrested until 2006. So, while it looks
15 -- makes it look better to him that the case has been pending
16 for twelve years, he's wasn't actually arrested until five
17 years after the murder because it was, as Ms. Butcher said,
18 it was a cold case. So, considering all of those things,
19 Judge, we would respectfully request that the court deny
20 the motions.

21 THE COURT: All right, Ms. Butcher.

22 MS. BUTCHER: Thank you, Your Honor, and, Your Honor,
23 as far as the statements, I didn't mean to imply that they
24 had not been turned over. My understanding from my
25 investigator, they are statements that are back at the

1 beginning of this case, of course 2001.

2 Additionally, the witness that I'm referring to, I
3 have spoken with Ms. Barr about contacting her. She has
4 told me they have been able to find the, I believe, sister
5 to that witness, but they don't have definite hands on that
6 witness either. My investigator runs his Social and comes
7 up with an out-of-state address, but he's trying to
8 tracking -- trying to track him down here and has found
9 people that have seen him in the area.

10 It's just a matter, Your Honor, that we need more
11 time. I have been -- really had the investigator on this
12 for about seven and a half weeks. That's just -- we just
13 haven't been able to fully investigate these matters.

14 THE COURT: Does your request for more time conflict
15 with the defendant's motion for speedy trial?

16 MS. BUTCHER: Your Honor, in, in a -- Your Honor, I
17 think they would be.

18 THE COURT: I'm speaking to the lawyer. I'll come to
19 you next.

20 MS. BUTCHER: I think they would be conflicting. I
21 didn't make the motion for a speedy trial. I was not his
22 attorney prior to this. I would not have made that motion
23 until the case is investigated and ready to go to court.
24 Your Honor, I, I, I think a speedy trial would be out of
25 time.

1 THE COURT: Ms. Barr, was this defendant's case called
2 for trial before and he wasn't present or?

3 MS. BARR: Yes, sir. It was originally called for
4 trial, scheduled to go to trial in December of 2007. Mr.
5 Barr at that time requested that the case be continued. I
6 believe at some point during 2007 the defendant actually
7 had an active bench on him. The defendant also had a
8 subsequent bench warrant issued against him for failure to
9 appear, both for -- in connection with this particular
10 charge.

11 When we -- the last time we attempted to call it to
12 trial was in October of 2012. Mr. Barr came and requested
13 not only a continuance, but also he requested that a bench
14 warrant not be issued. Your Honor at that time heard the
15 motion and essentially said that we would not hear the case
16 until the defendant was in court, particularly since his
17 counsel was asking to be relieved, and so a bench warrant
18 was issued.

19 THE COURT: And that was Mr. Barr seeking to be
20 relieved?

21 MS. BARR: Yes, sir.

22 THE COURT: All right.

23 MS. BARR: And a bench warrant was issued against him
24 for failure to appear. We addressed the matters after he
25 was picked up on a bench warrant in -- it was either the

1 end of December of 2012 or end of January of 2013. But we
2 appeared before the court on January the 29th on his motion
3 to lift the bench warrant.

4 THE COURT: Was Mr. Barr relieved prior to his death?

5 MS. BARR: No, Your Honor. He was relieved as counsel
6 at that hearing in January of 2013.

7 THE COURT: Okay, and then Ms. Shuler was appointed?

8 MS. BARR: Yes, sir.

9 THE COURT: Ms. Shuler has since been relieved?

10 MS. BARR: Yes, sir.

11 THE COURT: And Ms. Butcher appointed?

12 MS. BARR: Yes, sir.

13 THE COURT: And now he wants to fire Ms. Butcher and
14 get ---

15 MS. BARR: And hire ---

16 THE COURT: --- get another lawyer?

17 MS. BARR: It appears so, yes, sir.

18 THE COURT: Or represent himself?

19 MS. BARR: It appear so, Your Honor.

20 THE COURT: All right.

21 Yes, sir.

22 DEFENDANT: Sir, I would like to see some evidence of
23 these frivolous bench warrants she's talking about. I have
24 never been incarcerated for a bench warrant on this case
25 until January the 13th of 2012. Where is these bench

1 warrants that she's ---

2 THE COURT: She said there was an active bench
3 warrant, which means they were looking for you or ---

4 DEFENDANT: The police, Your Honor ---

5 THE COURT: --- couldn't find you and you were
6 arrested.

7 DEFENDANT: I stay right here in White Oak. I
8 promise, sir, they got my address, sir. Far as not
9 contacting me, Mervin Knight was my bondsman. He has not
10 contacted me. I haven't had any roll call date as of 2009,
11 sir. I mean, can she produce these bench warrants? Did
12 you do the written order, sir? A judge has to do a written
13 order for a bench warrant. Where are these bench warrants
14 that she's talking about, sir? I don't see them.

15 As for as Shuler, she didn't do my pretrial motions,
16 sir. I'm entitled to a pretrial motion due to speedy trial
17 act, sir, 31-61 and 31-74, sir.

18 THE COURT: What's your ---

19 DEFENDANT: I'm entitled to pretrial motions. She
20 hasn't done no motions. She has been my counselor since
21 July.

22 THE COURT: So, did ---

23 DEFENDANT: She won't even do motions, sir, to lift
24 this bench warrant.

25 THE COURT: Do you want to represent yourself?

1 DEFENDANT: I can't represent myself because this is a
2 murder charge, sir.

3 THE COURT: Well, you can. You have a constitutional
4 right to represent yourself if you want to represent
5 yourself. You've been given three now, three lawyers.
6 You're not ---

7 DEFENDANT: I paid ---

8 THE COURT: --- satisfied with any of them?

9 DEFENDANT: --- for my first lawyer, sir. I wasn't
10 given Verdell Barr, sir.

11 THE COURT: Mr. Barr filed a motion to be relieved?

12 DEFENDANT: Yes, sir.

13 THE COURT: And he was relieved?

14 DEFENDANT: Yes, sir.

15 THE COURT: And Ms. Shuler was appointed?

16 DEFENDANT: I mean, he wasn't given, though ---

17 THE COURT: She was relieved, and ---

18 DEFENDANT: Now, Shuler was given -- but she violated
19 my rights, my Fourteenth Amendment, sir, *Anderson vs.*
20 *California*. What's the other case? It's another case.
21 She must do pretrial motions, sir. There is no pretrial
22 motions done in my behalf.

23 THE COURT: But if you have ---

24 DEFENDANT: I'm sitting here ---

25 THE COURT: --- a lawyer representing you ---

1 DEFENDANT: She's right here, sir.

2 THE COURT: Mr., Mr. ---

3 DEFENDANT: She hasn't done one motion. Ask her why.

4 THE COURT: Mr. Moseley.

5 DEFENDANT: She's violating my rights, sir.

6 THE COURT: Mr. Moseley.

7 DEFENDANT: It's not my fault.

8 THE COURT: Mr. Moseley.

9 DEFENDANT: Yes, sir.

10 THE COURT: Sit down for a minute. If you have a
11 lawyer representing you, then documents must be filed by
12 the lawyer. You've written to the court. You are citing
13 all of these cases and laws and various things. If you
14 want to represent yourself, you have a constitutional right
15 to represent yourself. You'd be subject to the same rules
16 as if you were a lawyer.

17 The state has provided lawyers for you. You have a
18 lawyer now, Ms. Butcher. She also has -- the state has
19 provided you a lawyer free of charge and an investigator
20 free of charge. If you do not wish to have a lawyer
21 represent you, and if you want to represent yourself, you
22 can represent yourself, but you can't have it both ways.
23 You cannot be a lawyer and have a lawyer. Either the
24 lawyer has to do it, or you can do it.

25 Now, if you want to be represented by counsel, let me

1 know if you want to be, but you're not going to pick and
2 choose and go through the whole list of lawyers in the
3 state of South Carolina until you are satisfied with one
4 because it appears that none of them will be able to
5 satisfy you. That's the impression I get.

6 If you want to represent yourself, you can; if you
7 want to be represented by a lawyer, you can. Which one you
8 want?

9 DEFENDANT: I'll represent myself, sir.

10 THE COURT: All right, you wish to represent yourself?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. That means if I relieve Ms.
13 Butcher, she gets up and goes, and this case comes up --
14 I'm not going to try the case. Judge James is scheduled to
15 try it next week. That means that you will be solely
16 responsible for representing yourself in this case. Is
17 that what you want?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 Ms. Butcher, anything further?

21 MS. BUTCHER: No, Your Honor.

22 THE COURT: Ms. Barr.

23 MS. BARR: Judge, just two things, if Your Honor
24 please. Mr. Moseley asked about bench warrants. There was
25 one issued by Judge Cothran.

1 THE COURT: I've ruled on that issue. Just on the
2 counsel issue. Do you have anything else on that issue?

3 MS. BARR: Judge, I think that perhaps just out of an
4 abundance of caution, if Your Honor would advise him of the
5 dangers of self-representation and so forth so that it's
6 not an issue next week?

7 THE COURT: All right.

8 Mr. Moseley, concerning your desire to represent
9 yourself, we're going to place you under oath. If you come
10 stand right here in front of me.

11 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

12 THE COURT: All right, Mr. Moseley, at this time I'm
13 going to go through some of your constitutional rights,
14 some of them which you have been citing to the court.

15 The constitution guarantees you the right to be
16 represented by counsel. You understand that?

17 DEFENDANT: Yes, sir.

18 THE COURT: And counsel has been appointed to
19 represent you. It is dangerous for a person untrained in
20 the law to represent himself. You're aware of that?

21 DEFENDANT: Yes, sir.

22 THE COURT: And did you go to -- how far did you go in
23 school?

24 DEFENDANT: I have a GED, sir.

25 THE COURT: A GED. Have you ever handled any cases

1 representing yourself before?

2 DEFENDANT: Yes, sir.

3 THE COURT: You have represented yourself before? In
4 what type of cases?

5 DEFENDANT: Civil cases. I had two civil cases for
6 four years fighting against twenty different attorneys.

7 THE COURT: All right, and are you familiar with the
8 rules of criminal procedure?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you familiar with the rules of
11 evidence?

12 DEFENDANT: Yes, sir.

13 THE COURT: Have you ever been treated for abuse of
14 alcohol or drugs or for mental illness?

15 DEFENDANT: Yes, sir.

16 THE COURT: And you mentioned a little earlier that
17 you were getting some type of psychiatric examination or
18 evaluation. Was that recently?

19 DEFENDANT: That was October the 29th, the day of the
20 roll call, 2012. I was admitted to Carolina Hospital, sir.

21 THE COURT: And where is that?

22 DEFENDANT: In Florence, South Carolina. I have the
23 documents right there, sir. I can present them to, to you,
24 sir.

25 THE COURT: All right, and I'd like to take a look at

1 them.

2 (A PAUSE.)

3 DEFENDANT: Is you going to -- may I speak, sir?

4 THE COURT: Yes, sir.

5 DEFENDANT: As you can see, Exhibit A shows that
6 October the 29th, I was at Carolina Hospital:
7 hallucinations, threats to kill myself, as well as others.
8 Exhibit B states the reason of the hospitalization due to a
9 incident that happened several nights before. Exhibit C
10 shows that Mr. Dennis of Pee Dee Mental Health, a discharge
11 nurse of Carolina Hospital, did fax the courts, Ms.
12 Kimberly Barr, documents that I was in the hospital. Now,
13 Exhibit D shows that on November the 2nd, I was transferred
14 to MUSC in Charleston, sir.

15 There is no reason that I should be incarcerated a
16 year and some change, sir, for having a mental-health
17 breakdown, sir. And she still hasn't showed, sir, any --
18 because you, you had been appointed this case, if I'm not
19 mistaken, since ---

20 THE COURT: I'm not appointed on any case.

21 DEFENDANT: I mean, since, since, since this case has
22 been heard, you have been an attorney -- the judge on this
23 case, sir. There has been no bench warrants on me, sir.

24 THE COURT: All right, this is not a bond, this is not
25 a bond hearing.

1 DEFENDANT: I know this is not a bond hearing, sir.

2 THE COURT: This is the hearing ---

3 DEFENDANT: But ---

4 THE COURT: Both of us cannot talk ---

5 DEFENDANT: Okay.

6 THE COURT: --- at the same time because she has to
7 take down what you say and what I say.

8 DEFENDANT: Oh. I'm sorry about that, sir.

9 THE COURT: So, when you hear my voice, you stop; when
10 I hear your voice, I'll stop.

11 DEFENDANT: Okay.

12 THE COURT: This is a hearing to determine whether or
13 not you are competent to represent yourself in a trial.
14 Any other matters regarding bond hearings or otherwise,
15 that's a totally separate issue. That has to be heard
16 separately; I'm not merging the two things together.

17 DEFENDANT: Okay.

18 THE COURT: So, you have handed up papers to me
19 showing that you had suicidal thoughts about killing
20 yourself or killing other people. You were in the hospital
21 last October. Is that when it was?

22 DEFENDANT: October before last.

23 THE COURT: October before last, and have you ever
24 been evaluated by the state of South Carolina to determine
25 your competency?

1 DEFENDANT: August the 28th, I have.

2 THE COURT: Ms. Barr, do you have any finding, a
3 report, or anything from the state regarding his competency
4 to stand trial or ability to differentiate between right or
5 wrong?

6 MS. BARR: Your Honor, he was, in fact, evaluated for
7 competency by the South Carolina Department of Mental
8 Health. The evaluators were -- and, Judge, I made a copy
9 of it and made it a part of the record. I was going to
10 give it to you.

11 The evaluation was done on August the 28th 2013. The
12 report was drafted on September the 19th of 2013. The
13 evaluators were Kimberly Harrison, and it was the opinion
14 of Dr. Harrison that the defendant was competent to stand
15 trial.

16 THE COURT: And, Ms. Butcher, did you receive a copy
17 of the report?

18 MS. BUTCHER: I did, Your Honor, and I was just afraid
19 of that, Your Honor. May I approach?

20 THE COURT: Yes.

21 And, Mr. Moseley ---

22 I have a report. Do you have a copy or the same thing
23 or something else?

24 MS. BUTCHER: It's -- I believe it's same thing. It's
25 just the copy.

1 THE COURT: All right.

2 MS. BUTCHER: I'm sorry. I thought you were asking
3 for a copy. Isn't that what you have?

4 THE COURT: And, Mr. Moseley, have you had a chance to
5 review this report?

6 DEFENDANT: Yes, sir. I have a copy of it.

7 THE COURT: Do you agree with it or disagree with it?

8 DEFENDANT: Technically -- you stated when you denied
9 my bench warrant on January the 29th of 2013 that you did
10 not agree with the evaluations of the doctors.

11 THE COURT: Yes, sir.

12 DEFENDANT: And you stated that the evaluation was to
13 be -- to see if I'm competent to lift the bench warrant for
14 society. That was your words, quote unquote, sir.

15 THE COURT: Well, with regard to the finding that you
16 are competent to stand trial ---

17 Did the report ever make a finding as to this issue of
18 competency to stand trial, Ms. Barr?

19 MS. BARR: No, Your Honor.

20 THE COURT: Okay. So, with that issue before me this
21 time in connection with whether or not you can represent
22 yourself, do you agree that you are competent to stand
23 trial, or do you take the position that you are incompetent
24 to stand trial?

25 DEFENDANT: I plead the Fifth on that matter.

1 THE COURT: You plead the Fifth. Do you have any
2 evidence to offer in addition to those records that you had
3 saying that you were suicidal, and in addition to the
4 report of Chief Psychologist Kimberly S. Anderson, do you
5 have any additional information that you want to present to
6 me regarding the issue of whether or not you are competent
7 to stand trial?

8 (A PAUSE.)

9 MS. BARR: Your Honor, while he is doing that, may I
10 inquire of the court if I handed Your Honor the report
11 regarding the competency to stand trial?

12 THE COURT: You handed to me the report entitled
13 "Evaluation: Competency to Stand Trial" dated 8/28/13, the
14 evaluation, the report dated 9/10/13. Ms. Butcher handed
15 to me from the state Department of Mental Health a copy of
16 the same thing.

17 MS. BARR: Your Honor, if I may also then supplement
18 the record? He was also evaluated for criminal
19 responsibility with the evaluation date of 8/28/2013,
20 report date of September 23, 2013. I will give Your Honor
21 my copy; I'll make a separate copy later.

22 It also references in the most recent criminal
23 responsibility report, the evaluator's notation that,
24 according to a competency-to-stand-trial report authored by
25 Dr. Richard Freeman -- Frierson, I'm sorry, in 2002, Mr.

1 Moseley reports that he had been addicted to alcohol and
2 cocaine in the past. He describes his pattern and use of
3 both substances, which would indicate physiological
4 tolerance, and it is our opinion that he would not meet the
5 criteria -- that he would meet the criteria for alcohol
6 dependence and cocaine dependence. And his continued use
7 of cannabis in the face of having been diagnosed with
8 mental illness would constitute an abuse of this substance.

9 Also in the prior report from 2002, there was the
10 opinion of the evaluator that Mr. Moseley was malingering.
11 That he reports auditory hallucinations. His self-reports
12 of auditory hallucinations did not appear consistent with
13 the objective findings made by the evaluator. Judge, I'll
14 just supplement that as part of the record as well.

15 THE COURT: All right.

16 MS. BARR: But it was the opinion from both
17 evaluations that the defendant was competent to stand
18 trial, and that at the time of the commission of the crime,
19 he did have the capacity to conform his conduct to the
20 requirements of the law, and did know the difference
21 between moral right and moral wrong.

22 THE COURT: All right, Mr. Moseley, this report also
23 lists your name as...

24 DEFENDANT: Shaheed Najib [phonetic].

25 THE COURT: Shaheed Najib. You've handed to me

1 records from the Carolina Hospital Systems dated
2 10/29/2012. States you arrived Friday night. Shot at.
3 Since not sleeping, hearing voices that are telling him to
4 kill himself and others, not specific. You feel you are a
5 threat to yourself and others, and you were evaluated. And
6 the psychological assessment was positive hallucinating,
7 negative aggravated, negative angry, negative anxious,
8 negative confused, positive for being depressed, negative
9 frustrated, negative hostile, negative paranoia, positive
10 suicidal thoughts.

11 I think all the positive things are you being positive
12 for hallucinating, being depressed, and having suicidal
13 thoughts and negative regarding agitated, angry, anxious,
14 confused, frustrated, hostile, paranoid. I think -- this
15 says a review of systems. I don't know whether those are
16 the findings or what, but that's, I'm simply believing,
17 what's in these records you've handed to me.

18 What else do you want me to consider on this issue of
19 whether or not you are competent to stand trial?

20 DEFENDANT: My motion's to dismiss, sir. I'm entitled
21 to a do a motion to dismiss before any trial, sir; I'm
22 entitled to that.

23 THE COURT: All right. The trial ---

24 DEFENDANT: And I would like to submit that.

25 THE COURT: --- is not today, and if you have any

1 other motions, they will come up next week before the judge
2 who is presiding.

3 DEFENDANT: Okay.

4 THE COURT: Including ---

5 DEFENDANT: Okay.

6 THE COURT: Including your motion to dismiss. You
7 will have to ask the judge who is residing on your case for
8 that.

9 DEFENDANT: Okay.

10 THE COURT: I'm tending to the preliminary matters.
11 So, that one will come next week, if you come next week.
12 Then some of these matters will be addressed beforehand.
13 That's why you're here today.

14 So, it appears that you have been evaluated twice on
15 the issue of whether or not you are competent to stand
16 trial, first in 2002 and then again in 2013. In both
17 instances, you have been determined to be competent to
18 stand trial.

19 The most recent report from 2013 gives a social
20 history of you being born in Philadelphia and coming to
21 Kingstree at some point in time, and went to school to the
22 tenth grade, at which time you went to prison, and you were
23 suspended from high school for fighting. You worked as
24 assembler, landscaper, fast food. The longest job you had
25 was for eighteen months at a newspaper in Florence. You

1 got started getting disability for mental health: bipolar,
2 schizophrenia. You had a lot of head injuries, some car
3 accidents, had a stroke in 2009. Began drinking alcohol
4 when you were seven or eight. Had a bad habit with
5 alcohol, cutting school, smoking marijuana. Last used
6 cocaine on New Year's of 2001 and said I'm still addicted
7 to it.

8 Then Dr. Frierson saw you in the year 2002. Had
9 criminal records dating back from '93. Armed robbery,
10 driving under suspension, driver's license suspension, blue
11 light. Admitted to psychiatric hospital in 2001 and for
12 being suicidal and depressed. He gave you medication for
13 all of that.

14 DEFENDANT: May I interject for a minute on that?

15 THE COURT: Yes, sir.

16 DEFENDANT: 2001, the month of this incident, I was in
17 Belmont Psychiatric Hospital, sir, when this crime took
18 place. When I came back down was, like, several months and
19 went to the hospital, et cetera. Then I got locked up here
20 a blue light, in which you held me for a year and let me
21 out 2002.

22 THE COURT: You said I held you?

23 DEFENDANT: Yes, sir. You held me for eleven months
24 in the county jail for a first offense of a blue light,
25 which was zero to ninety days. You gave me three years

1 suspended to two years' probation and ninety days' house
2 arrest, sir.

3 THE COURT: Well, a blue light is ninety days to three
4 years.

5 DEFENDANT: Yes, but first offense was zero to ninety
6 at that time.

7 THE COURT: No. First offense blue light is ninety
8 days to three years. It's been that way for years and
9 years and years. You can get up to three years for blue
10 light, ninety days to three years or a fine of not less
11 than \$500.

12 DEFENDANT: But I have records at home attesting that
13 I was in the hospital, sir.

14 THE COURT: So, that's your defense when you come to
15 trial. If you have an alibi or -- you have the perfect
16 alibi if you were in a psychiatric hospital when a murder
17 occurred. That's evidence I'm sure you will present to the
18 jury. I'm not here to decide whether you're guilty or not
19 guilty of the crime.

20 They gave you a mental health diagnosis when you were
21 in SCDC.

22 DEFENDANT: That was 2004.

23 THE COURT: All right.

24 DEFENDANT: That's bias.

25 THE COURT: Had some issues ---

1 DEFENDANT: May I ask some questions, ask a question,
2 sir?

3 THE COURT: Yes, sir.

4 DEFENDANT: While you're determining my competency for
5 -- to represent myself, if you don't mind because you also
6 determine whether you will allow me to be off of this bench
7 warrant, sir, because I violated no rights. I've been
8 locked up for years, sir.

9 THE COURT: Well ---

10 DEFENDANT: And I, I, I've done nothing but had a
11 breakdown and went to the hospital.

12 THE COURT: I understand, but if you come to -- if you
13 are charged with the crime of murder -- say you were
14 sitting where I'm sitting.

15 DEFENDANT: Yes, sir.

16 THE COURT: And you're charged with murder, killing
17 someone, and you are having suicidal thoughts about killing
18 yourself or killing someone else, do you think as the judge
19 you would send a person out on the streets who has suicidal
20 thoughts and who -- or either wants to hurt himself or kill
21 someone else?

22 DEFENDANT: Okay, sir, I have had no mental health
23 counseling since I've been incarcerated, none. No, no
24 mental health counseling, no programs, no mental health
25 medication. On the street, I go to the hospital, Pee Dee

1 Mental Health, sir. You got me locked up, and I'm not
2 receiving no aid.

3 THE COURT: All right.

4 DEFENDANT: Period, sir.

5 THE COURT: Well, currently ---

6 DEFENDANT: Period, sir, no aid, sir.

7 THE COURT: --- as it currently stands, this issue
8 will be decided next week.

9 DEFENDANT: Okay.

10 THE COURT: And if you are not guilty, you can't be
11 locked up. You'll be free to roam from here to California,
12 wherever you want to go, if you're not guilty. The whole
13 issue will be decided.

14 DEFENDANT: So, I submit ---

15 THE COURT: That will be a done deal.

16 DEFENDANT: I submit my motions to that judge?

17 THE COURT: Yes.

18 DEFENDANT: Next week?

19 THE COURT: Yes.

20 DEFENDANT: What's his name again, sir?

21 THE COURT: Judge James, Judge George C. James. He's
22 presiding next week.

23 So, the record also contains a diagnosis, information
24 related to criminal responsibility, and the opinion of the
25 evaluators who evaluated your situation. And the

1 conclusions of the doctor who saw you said, their view,
2 that you are competent to stand trial. That you
3 demonstrated some factual understanding of courtroom
4 personnel and legal procedures, and the ability to learn
5 and recall information relevant to your case. You appeared
6 to have an adequate rational appreciation of your legal
7 situation, and the ability to evaluate your options in a
8 logical manner. You did not exhibit any overt difficulties
9 with memory, attention, or concentration. You have the
10 ability to work with your attorney and control your
11 behavior if you choose to do so. There is no evidence your
12 behaviors, thought process ability, or ability to
13 communicate are currently influenced by mental disorders
14 and, therefore, you have the capacity to stand trial. And
15 similarly, based on the evaluation, have the ability to
16 conform your conduct to the requirements of the law.

17 So, taking into consideration your medical records
18 that you gave me, the medical records from the mental
19 health department, and our communications here today, I
20 find that you are competent to stand trial, and that you
21 are legally responsible for any act that you may be found
22 guilty of committing because you have the capacity to
23 conform your conduct to the requirements of the law. So,
24 we've settled that issue.

25 Now the next question is continuing on about your

1 representing yourself. Now, you understand the dangers of
2 self-representation. You understand that you are charged
3 with a most serious crime, among other things being murder,
4 and that the maximum penalty for murder is life
5 imprisonment, thirty years to life imprisonment. Do you
6 understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: If you're found guilty. And I don't know
9 what his criminal -- what your criminal record is and
10 whether or not that, that if -- whether you are charged
11 with some other lesser or found guilty of some of the
12 lesser offenses in this indictment, whether you're facing
13 enhanced penalty for those things such as attempted armed
14 robbery and whether or not that -- I don't know what -- the
15 total of years that you may face. But even separately
16 those crimes such as attempted murder, that carries up
17 to ---

18 Is it twenty years, attempted murder, thirty years?

19 MS. BARR: Back then it was twenty. It's now thirty.

20 THE COURT: Do you understand that's a possibility for
21 that as well, and up to five years for possession of a
22 weapon during a violent crime?

23 Now, you do understand that should you, should you
24 represent yourself, the judge will not be here to advise
25 you as to how you should try your case or even as -- or to

1 advise you in any manner whatsoever regarding the rules of
2 evidence and the rules of criminal procedure. You
3 understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: Now, one of the rules of evidence is the
6 rules, rule against hearsay. Do you know what that is?

7 DEFENDANT: Basically he say, she say I saw him do
8 this and that, whatever basically.

9 THE COURT: All right, but typically witnesses testify
10 as to things within their own personal knowledge, things
11 that they have seen, heard, et cetera. Not what someone
12 else told them or through secondhand information unless
13 there is an exception to that rule, and there are some
14 exceptions as it relates to expert witnesses and others.
15 But typically witnesses cannot testify as to things that
16 they did not personally see, hear, or know. That's
17 basically the hearsay rule, and there are some exceptions
18 to those rules.

19 Now, if -- the court and the judge would be there
20 making decisions regarding any objections made by you
21 and/or the state relating to issues of hearsay. Do you
22 understand?

23 DEFENDANT: Yes, sir. I'd like to comment on that.

24 THE COURT: All right.

25 DEFENDANT: From my memory, Rule 16, exculpatory

1 evidence that I received from Mr. Barr, may he rest in
2 peace, I don't have the copies on me now. I do have a copy
3 of my motion, but I'm waiting for my exhibits from it, from
4 the Supreme Court that I sent. I'm waiting for it.

5 But to make a long story short, hearsay evidence, a
6 Willie James or Chamberlain or somebody attested that he
7 saw the night of the shooting a dude with gold teeth,
8 braids in his hair. I do not fit that discretion --
9 description.

10 Keisha Burgess brother, sister of Don Burgess, was
11 talking to, I think, Tony York or Carlos York at the time.
12 And she made the statement that on the night of the murder
13 she saw Tony York, the victim's cousin, blood on the shirt
14 and a lot of drugs. There's also other statements that --
15 from -- FBI statements. Got Conda Cooper [phonetic], Mr.
16 Todd Fulton, several other people attesting Mr. Brockington
17 paid Steve Singletary to do the hit. There's other
18 testaments from December Wallace that, on the night of
19 murder, that she saw Mr. Singletary at the scene, et
20 cetera. And I'm -- all these hearsay stuff and they got me
21 from a old childhood friend, Lonnie Dozier, under a federal
22 proffer deal saying I did the crime to get a time cut. And
23 Corey Liner, a old childhood friend, convicted child
24 molester, saying that I did the crime but Lonnie said it,
25 but the state has done nothing to those so-called hearsay

1 evidence, sir. And I would like to know how do you feel
2 about that, sir, because I will be presenting it to
3 whatever the judge is next week.

4 THE COURT: Well, my feeling doesn't really matter
5 about any of it, and I don't know ---

6 DEFENDANT: I just -- your understanding of the
7 hearsay, dealing with that. That's what I'm trying to
8 understand.

9 THE COURT: Well, you understand that the judge today
10 or next week will not be here to explain to you judge's
11 feelings about anything, and the judge who is presiding
12 will rule based on the evidence that is presented and the
13 objections that are made to the evidence. And that the
14 trial will proceed according to the rules of evidence,
15 including the rules involving hearsay evidence. And all
16 issues that you may have regarding witnesses and their
17 testimony and your objection to it, disagreement with it,
18 all of that is part of a trial. And it will be for the
19 jury ---

20 DEFENDANT: But I was asking ---

21 THE COURT: --- to listen to the evidence, whatever
22 evidence the judge allows the jury to listen to, and decide
23 whether or not they are convinced beyond a reasonable doubt
24 as to whether you are guilty or not guilty. That's the
25 role of the jury. You understand? I don't know what the

1 evidence will be.

2 DEFENDANT: No, I was asking regards to you explaining
3 to me the rules now. This is what you're doing, right?

4 THE COURT: No, I'm not explaining ---

5 DEFENDANT: To see that I know or do I have knowledge
6 or understanding of what you're saying, right?

7 THE COURT: Yes, sir.

8 DEFENDANT: So, I'm asking you. How does that pertain
9 to hearsay?

10 THE COURT: Well.

11 DEFENDANT: Being that you are a judge of the law.

12 THE COURT: Well, generally witnesses can testify as
13 to things which they know, which they have seen, and
14 generally not what they have heard unless they heard it
15 from you.

16 Now, there are exceptions to the hearsay rule which
17 can be very technical and which I cannot attempt to educate
18 you on here today. The lawyers are educated on it based on
19 the fact they've studied the law and practice the law.
20 People who are not lawyers are typically not sufficiently
21 educated on it, and that's why they are often represented
22 by lawyers.

23 If you decide that you do not wish to be represented
24 by a lawyer, then part of the risk you take, obviously, is
25 the risk of not fully knowing the law sufficient --

1 sufficiently enough to adequately represent yourself.

2 That's the point of what I'm explaining this to you, the
3 reason I'm explaining it to you. Do you understand that?

4 DEFENDANT: Yes, sir. I have a question.

5 Ms. Barr, what do you have to say about those other
6 eyewitnesses and people, ma'am, because exculpatory
7 evidence is evidence that favors me.

8 BAILIFF: Order in the court.

9 THE COURT: She's not going to ---

10 DEFENDANT: I'm not.

11 THE COURT: She has no obligation to ---

12 DEFENDANT: Oh. Oh, this is contempt? Oh, I'm not
13 trying to have a contempt now, sir. I'm just asking the
14 question.

15 THE COURT: I understand, but she's not -- she doesn't
16 have to explain to you her case, the case against you at
17 this time. I'm here to determine your issue of you and
18 representing yourself. So, we're going to move to the next
19 phase of that.

20 DEFENDANT: Yes, sir.

21 THE COURT: And you said you are familiar with the
22 rules of criminal procedure, did you not?

23 DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that under the
25 rules, certain motions can be made before the trial, during

1 the trial, and after the trial?

2 DEFENDANT: Yes, sir.

3 THE COURT: And you've made a number of those motions
4 already.

5 DEFENDANT: Yes, sir.

6 THE COURT: Including a motion to dismiss and the
7 like.

8 Now, do you understand that during your trial, you'd
9 have a right to testify or not to testify?

10 DEFENDANT: Yes, sir.

11 THE COURT: Now, if you decide to testify, you may be
12 asked about any convictions you may have had involving
13 dishonesty or false statements or crimes you'd been
14 convicted of that carry a sentence of more than one year.
15 You understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: And that these convictions may be used to
18 attack your credibility. You understand?

19 DEFENDANT: Yes, sir.

20 THE COURT: And if you decide not to testify, the
21 court will instruct the jury that they cannot hold that
22 fact against, against you because you have a constitutional
23 right to remain silent. Do you understand this right?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, you claim to have some

1 defenses to the charge, these charges against you,
2 including the defense of alibi.

3 DEFENDANT: Yes, sir.

4 THE COURT: That you weren't -- you couldn't have
5 committed the crime because you were someplace else. Do
6 you understand that that's the defense that you present to
7 the jury, and that the state has the burden of disproving
8 your alibi and proving that you were present and committed
9 the crime?

10 DEFENDANT: Yes, sir.

11 THE COURT: Now, do you understand that an attorney
12 can help you with many of these things that I've discussed
13 with you?

14 DEFENDANT: Yes, sir.

15 THE COURT: Including the rules of evidence, the rules
16 of civil -- criminal procedure, and presenting a defense?
17 You understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: And that's why Ms. Butcher and others were
20 appointed to represent you?

21 DEFENDANT: Yes, sir. I understand that.

22 THE COURT: All right. Now, I must tell you that, in
23 my opinion, that you'd be far better in defending yourself
24 by a trained lawyer than you, despite your own personal
25 view of your own wisdom. That you'd be better defended by

1 a lawyer representing you rather than you attempting to
2 represent yourself. I think it's unwise of you to try to
3 represent yourself because though you may have been exposed
4 to some books and cases and all that, you do not seem to be
5 sufficiently familiar with the rules and procedures and all
6 to represent yourself as well as you can being represented
7 by a lawyer.

8 So, I would, therefore, strongly urge you to not try
9 to represent yourself and take advantage of the assistance
10 of a lawyer and to, to direct whatever input you might have
11 through the lawyer sitting there at the table right next to
12 you during the course of the trial. Do you understand ---

13 DEFENDANT: Yes, sir.

14 THE COURT: --- my view on that issue, and in light of
15 the penalty that you might suffer if you're found, found
16 guilty, such as a sentence of up to life imprisonment, and
17 in light of all the difficulties that I would anticipate in
18 representing yourself, do you still desire to represent
19 yourself and give up your right to be represented by a
20 lawyer, or do you want to think about it?

21 DEFENDANT: It's a good question, sir. I do have an
22 ego, being a Gemini. That's a good question because I, I
23 will admit, now, pretrial, et cetera, I'm a beast. Yes, I
24 will admit. Trial, I'm really not familiar with besides
25 watching *Law and Order*, et cetera, et cetera, et cetera.

1 THE COURT: You understand that *Law and Order* is there
2 for entertainment purposes?

3 DEFENDANT: Yes, sir, but I, I do watch True TV, too.

4 THE COURT: I like to watch it myself sometimes.

5 DEFENDANT: Let me talk with this -- I'll ask her some
6 questions.

7 THE COURT: All right. Sure, sure.

8 DEFENDANT: And then I can give you an answer, if you
9 don't mind.

10 THE COURT: We'll take a break in this proceeding.
11 You can take your time, talk with her. We'll move on to
12 something else and then later on come back to you.

13 (OFF THE RECORD.)

14 THE COURT: All right, Mr. Moseley, what did you
15 figure out?

16 DEFENDANT: I think I'll go with myself, sir, because
17 it's as if each of these attorneys don't care about none of
18 my rights in which I've attempted to have an advocate. So,
19 I put my life in my own hand, and if something bad happens,
20 I'll be back in and appeal. That's how I feel about it,
21 sir, because nobody's going to get no money off of
22 railroading me, sir. They already got enough money off of
23 me for a year for nothing. That's how I feel about it,
24 sir.

25 THE COURT: All right.

1 DEFENDANT: I'll represent myself.

2 THE COURT: Is your decision entirely voluntary on
3 your part?

4 DEFENDANT: Voluntary on myself, sir.

5 THE COURT: All right. I find that Mr. Moseley has
6 knowingly and voluntarily waived his right to counsel. The
7 trial is scheduled for next week, and it will proceed next
8 week as scheduled unless Judge James, who will take over
9 the case on next Monday, unless he decides to continue it,
10 dismiss it, postpone it, or otherwise. However, on the
11 issue of counsel, I am going to require that Ms. Butcher
12 remain as standby counsel unless Judge James decides that
13 she doesn't need to be there.

14 Standby counsel, Mr. Moseley, is though you are
15 representing yourself, you have a lawyer standing by in
16 case you want to ask her any questions, confer with her.
17 During the course of the trial, she can address those
18 questions. She'll be your standby counsel.

19 If you don't want her here period, then you need to
20 address those issues with Judge James, and he'll address
21 that. And it's certainly fine with me if you are here and
22 she is not here, but most other judges prefer to have a
23 lawyer at the table standing by. So, we'll let Judge James
24 address the issue of standby counsel for you and for Ms.
25 Butcher.

1 You understand, Ms. Butcher?

2 MS. BUTCHER: Yes. Yes, I do.

3 THE COURT: You understand, Mr. Moseley?

4 DEFENDANT: Yes, sir. I have one more question, sir.

5 THE COURT: All right.

6 DEFENDANT: Is it possible that I can remain here,
7 sir, because I'm all the way in Effingham, and I need some
8 documents from the family that I cannot get ahold to, and I
9 have violated no rules to even be transferred over to
10 Effingham, sir.

11 THE COURT: Well, you know, of course I'm not sure how
12 you ended -- how you got to Effingham versus Kingstree. I
13 wasn't a part of that.

14 DEFENDANT: Lieutenant Irvin stated that you ordered
15 it after denying my bench warrant. That's what he told me.

16 THE COURT: And who is Lieutenant Irvin?

17 DEFENDANT: They got a dude that work at the county
18 jail.

19 THE COURT: I'm not sure who he is. I'm not sure ---

20 DEPUTY: Who's the dude with you?

21 DEFENDANT: That's what he told me. He can attest to
22 that, sir. He helped transfer me because I asked why am I
23 being transferred. I violated no rights, no rules because
24 Ms. -- the major told me, Major Presley told me. Fighting
25 and all that stuff, back in the days, they would send you

1 to Effingham. So, I've spoke to nobody. I was in there
2 from January the 7th to January the 29th, and I was
3 transferred out the blue, and they said it was because -- I
4 violated no rules, sir.

5 THE COURT: All right.

6 DEFENDANT: So, could I please stay because I have all
7 my legal mail and stuff, sir.

8 THE COURT: Let me hear from Ms. Barr and Ms. Butcher.
9 First Ms. Butcher.

10 MS. BUTCHER: Thank you, Your Honor. For the record,
11 I would just like to turn over my file to Mr. Moseley for
12 anything he needs to review, as well as the phone number
13 and email address for the PI that is on this case, along
14 with his name.

15 What I have retained, other than my personal notes,
16 are -- is the order which -- appointing Mr. Davis as the PI
17 so I can ensure at the end of this he does get -- his
18 funding gets paid, Your Honor.

19 THE COURT: All right and, Ms. Barr, on the housing
20 issue.

21 MS. BARR: Judge, I believe that initially when he was
22 arrested, the co-defendant, Corey Liner, was also arrested.
23 So, I think that there was a decision made by the sheriff's
24 office to not have them housed in the same detention
25 center. Mr. Liner, of course, has since been released, and

1 my understanding as to the reason why he's currently still
2 being housed in Effingham is because of certain security
3 concerns.

4 Judge, you may have not had time to see this part of
5 his evaluation, but there were findings by the psychiatrist
6 who evaluated him based on records received from the
7 detention center at Effingham that the defendant had a
8 tendency to expose himself and masturbate in front of
9 female correctional officers. And so I believe that the
10 jail here thought that Florence County would be in a better
11 position to secure him and make sure that he doesn't have
12 any outbursts or do anything that he shouldn't do here.
13 So, I think that that may have factored into the decision
14 to continue to have him in Florence County.

15 THE COURT: Does Williamsburg County have to pay
16 Florence County to house Williamsburg County prisoners?
17 Does anyone know?

18 MS. BARR: I'm not sure, Judge.

19 DEPUTY: That's how -- we hold inmates for them, and
20 they'll hold inmates for us.

21 THE COURT: Okay.

22 DEFENDANT: Sir.

23 THE COURT: Yes, sir.

24 DEFENDANT: In regards to that, sir, I have no charge
25 on no masturbation subject. I've been on lockup now, which

1 is I'm doing -- on Florence County jail since February. No
2 charges, sir. Due to this disciplinary board that they
3 have and -- it's all due to legal work that I help with
4 people, sir. I have no charge, sir.

5 My last charge was July for having another inmate's
6 pain pills because I had a abscessed tooth, sir. The
7 charges they gave me was in-house, sir. I have no valid
8 charges, sir, and I have documentations, affidavits in my,
9 in my folders now, sir, attesting to this. It's going into
10 a civil -- into my civil case, sir. So, what she talking
11 about, I don't know.

12 (A PAUSE.)

13 THE COURT: All right. Go ahead. I'm sorry.

14 DEFENDANT: Yes, sir. I have documentation attesting
15 to being on lockup, subjected to reprisals. I mean, I just
16 was taken -- all my property was taken due to a civil
17 action case, which some of them I received. I had -- the
18 officers that came and got me will attest ---

19 THE COURT: A civil suit against Florence County?

20 DEFENDANT: Yes, sir, that I filed, sir.

21 THE COURT: Do you have any going against Williamsburg
22 County jail?

23 DEFENDANT: Do I have any going against?

24 THE COURT: Any civil suits the Williamsburg County
25 jail?

1 DEFENDANT: No. No, sir.

2 MS. BARR: Judge, also Mr. Moseley being in Effingham,
3 he has the access to a lot of legal materials that's helped
4 him to draft certain motions and so forth for the court to
5 consider. And certainly if he's decided he wants to
6 represent himself in this case, then it may be to his
7 advantage to continue to be able to have access to legal
8 tools to help him do that.

9 THE COURT: How about that, Mr. Moseley?

10 DEFENDANT: No, sir. There is no law library. Lewis,
11 *Lewis vs. Casey*, 1996. There is none.

12 THE COURT: All right.

13 DEFENDANT: That's what part of my lawsuit is about.
14 I've been getting cases from my fourteen-year-old daughter
15 for my suit, sir, looking up on Justia.com. I have no
16 access to no law library, sir.

17 THE COURT: All right.

18 DEFENDANT: None.

19 THE COURT: All right. Well, he has -- his case is
20 scheduled here. It's scheduled for next Monday.
21 Williamsburg County is on the move, upgrading courthouse,
22 jail house. We'll trust that security is sufficient at
23 Williamsburg County jail for Mr. Moseley to be here. So,
24 he can stay here at Williamsburg County, but at the first
25 sign of trouble, then the jail folks, and it's their own

1 administration. They make administrative decisions
2 concerning where people should be and not circuit court
3 judges. So -- but for convenience of him and being able to
4 defend himself, I'm going to order that he remain in
5 Williamsburg County jail except that if he poses any
6 problems, disciplinary or otherwise, to the folks at the
7 county jail, then they can transfer him to wherever they
8 may want to transfer him.

9 DEFENDANT: Thank you, sir.

10 THE COURT: All right.

11 MS. BARR: And, Judge, may I just ask one thing as
12 relates to that issue? One of the witnesses that we have
13 pursuant to a writ of habeas corpus is an inmate at the
14 federal correctional institute, and we have done the
15 paperwork that's attendant to that. And we, as part of
16 that application, had to submit a form to the feds
17 indicating the officers who would pick up the witness,
18 transport him back. And we had to get clearance from the
19 sheriff's office that that witness could be housed here,
20 and that they would accept responsibility for that witness
21 during the pendency of the trial, and we've done that.

22 And so my concern is that we would have to then,
23 because Mr. Moseley would be here, have to have that
24 witness to go to some other county jail. And that would
25 require us to redo paperwork, which with the feds,

1 sometimes you have to get those things in at least a week
2 or so in advance, and I'm not sure how to handle that.

3 THE COURT: In the event there is some problem that
4 exists as a result of all of that, that's part of the
5 administrative authority of the jail to work that out.

6 That means, Mr. Moseley, if this other person comes
7 in, or whenever that person comes in, and they decide that
8 you shouldn't be there when that person is there, then they
9 may move you to some place else. All of that is within the
10 jail. I'm not trying to run anybody's jail. So, for the
11 time being, you're good to go to stay here. If you have to
12 be moved for some other reason, that's beyond me.

13 DEFENDANT: I thank you, sir.

14 THE COURT: All right.

15 DEFENDANT: I've violated no rules before, and I will
16 not now, sir.

17 THE COURT: I understand. All right. Well, good luck
18 to you.

19 DEFENDANT: Thank you, too, sir.

20 --- END OF TRANSCRIPT OF RECORD ---

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 STATE OF SOUTH CAROLINA,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 ARTHUR MOSELEY,) 2007-GS-45-52
 9 DEFENDANT.)

10

11

JANUARY 27, 28 AND 31, 2014

12

WILLIAMSBURG, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15

HONORABLE JAMES, JUDGE; AND A JURY

16

17 A-P-P-E-A-R-A-N-C-E-S:

18

FOR THE PLAINTIFF:

19

MS. KIMBERLY V. BARR, ESQ.

20

MR. TYLER B. BROWN, ESQ.

21

FOR THE DEFENDANT:

22

MR. MOSELEY, PRO SE

23

MS. DEBRA BUCHER, ESQ, STAND-IN FOR MR. MOSELEY

24

MR. LEGRAND CARRAWAY; ESQ FOR MR. LINER

25

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1 appropriate time to either Mr. Moseley or Mr. Butcher. I
2 can, certainly, receive it, but she's not entitled to make
3 any presentation or request on his part.

4 Ms. Barr, is the State ready to proceed with the
5 pretrial matters?

6 MS. BARR: Yes, Your Honor.

7 THE COURT: Mr. Carraway, are you ready to
8 proceed?

9 MR. CARRAWAY: Yes, Your Honor.

10 THE COURT: Mr. Moseley, are you ready to proceed?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I've got -- I think what I
13 have up here, there are three motions. You may have others.
14 I'll be, certainly, happy to hear from you in any order you
15 want to go.

16 THE DEFENDANT: Your Honor, can I --

17 THE COURT: I'll leave that entirely up to you?

18 THE DEFENDANT: Okay.

19 THE COURT: You have a separate one, too?

20 THE DEFENDANT: Yeah, this is basic --

21 THE COURT: You need to stand.

22 THE DEFENDANT: Okay. Yes, I have something
23 written down being the order of how I'm presenting documents
24 and stuff to present to you.

25 THE COURT: All right. And what I'll do is I will

1 allocate a reasonable time for you to present these motions,
2 but I will not -- it's not going to be the reading of a
3 speech. What I want to hear first is what your motion is,
4 the first one you want to argue, then your grounds, then Ms.
5 Barr will be able to respond and Mr. Carraway can respond
6 and then you will have the last word on your motion.

7 So which one would you like to argue first?

8 THE DEFENDANT: My motion to dismiss.

9 THE COURT: All right. Be glad to hear from you.
10 And make sure you speak loudly so the court reporter can
11 hear everything, okay?

12 THE DEFENDANT: Okay. I'm breaking the whole
13 situation down.

14 THE COURT: Okay. Just speak loudly so we can
15 hear you.

16 THE DEFENDANT: Okay. Sir, I have documentation
17 that I present proof of innocence as well as my -- motion to
18 dismiss. It would establish judicial conclusive evidence
19 there are other perpetrators who could have committed or
20 know who did commit the crimes. The Feds investigated the
21 case in 2003 to 2006. My name was -- my name was in the
22 case through a proffer deal by Lonnie Dozier. He received
23 immunity as well as a time cut to prove his accusation. It
24 is a copy of his deal, sir, on -- he got his time cut seven
25 years and three months.

1 THE COURT: He was in federal custody?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. You can hand that to one of the
4 officers and they will -- it will work itself way up here to
5 me.

6 THE DEFENDANT: I was not notified of the
7 investigation. That's a delay within my rights of due
8 process of law to a speedy trial 18-USC-3161 and 3174
9 secured by the Fifth and Sixth Amendments were violated,
10 sir. U.S. case, State vs. Maryland in which three years --
11 also occurred with that person's case and conviction
12 overturned by District court appellate's motion and
13 dismiss --

14 THE COURT: Would you please hand this to him?

15 THE DEFENDANT: And dismiss the indictment for
16 lack of a speedy prosecution -- prejudiced by the three-year
17 delay.

18 Now, sir, what's -- with that being said, sir, let
19 the record show I have not unilaterally waived my speedy
20 trial right's act. This motion for jury trial on July 29th,
21 2013 --

22 THE COURT: You filed a motion for a speedy trial
23 in July?

24 THE DEFENDANT: No, sir, I said just now -- sorry
25 about that. I have not unilaterally waived my speedy trial

1 rights. This motion for a jury trial July 29th, 2013, in
2 which -- filed August the 1st, 2013 is without my consent,
3 sir. Sir, this motion is an actual fraud. I dealt with Ms.
4 Butcher, my pro bono attorney of which -- in which is a
5 fraud of the court, sir. I produced documents -- exhibits
6 of my first motion, which is from April 25th, 2015 [sic]
7 motion to dismiss this first one. And I'm going to present
8 the other one to you, also, sir, but I'm just showing that I
9 did attempt back in April to do this motion and I was denied
10 access at that time. Ms. Shuler was my attorney.

11 Also, sir, in the court with U.S. v -- 1993, I
12 cannot unilaterally waive my speedy trial rights. I only
13 forfeit them if I fail to administer a motion to dismiss by
14 a trial from section 18-USC --

15 THE COURT: Federal law doesn't apply. We're
16 talking about --

17 THE DEFENDANT: It applies to the 14th Amendment,
18 sir.

19 THE COURT: All right. What's your motion to
20 dismiss based on?

21 THE DEFENDANT: My motion to dismiss is based on
22 this, sir, these witnesses -- this is what it's based on --

23 THE COURT: Have any of these motions been argued
24 before, Ms. Barr?

25 MS. BARR: Not the motion to dismiss, Your Honor.

1 THE COURT: Okay.

2 THE DEFENDANT: This is the July copy of the
3 motion to dismiss. It's based on eyewitness statements of
4 the Rule 16 exculpatory documents that I received, sir --
5 FBI D dated March 18th, 2002. The FBI D, that's proven in
6 the exhibit I've got. All the exhibits I got under FBI.
7 March 18, 2002, it attest the night of the murder, she saw
8 the victim's cousin, Tony York, with blood on him and a lot
9 of drugs in his possession. She was the driver when they
10 stole Brockington's, may he rest in peace, drugs and David
11 York at the time, which is Tony York's brother and the
12 victim, Tory York, may he rest in peace, first cousin.

13 Number two, FBI E, dated October 30th, 2001, Mr --
14 York, the victim's little brother. I have in my motion, he
15 stated his cousin -- I have to make adjustments because I
16 just found out he's the brother. In my motion, I've got his
17 cousin. Anyway, he cites that Andy White says Tony ran to
18 his house with a bloody shirt on asking Andy for a
19 tee-shirt.

20 THE COURT: All that information has been given to
21 them, Ms. Barr?

22 MS. BARR: Yes, sir, Your Honor.

23 THE COURT: All right. Go ahead.

24 THE DEFENDANT: Number three, Willie James
25 Chandler, it's a FBI exhibit, also.

1 THE COURT: I'm going to need a statement.

2 THE DEFENDANT: That's FBI -- sorry about that,
3 sir.

4 THE COURT: That's all right.

5 THE DEFENDANT: March 23, 2001, he gave a
6 description of a black male with a goatee and braids in his
7 hair. That's not me nor has that ever been my description.
8 That's the description of Tony York. He was seen before,
9 right before the shots were fired and after.

10 Number four, Decema Wallace, FBI Exhibit G, dated
11 April 22, 2003, cites even the family knew he had something
12 to do with it and blamed him for being the last seen person
13 on the porch before the shots were fired. Let the record --

14 THE COURT: You need to read slower because --

15 THE DEFENDANT: Oh, okay.

16 THE COURT: If you want the court reporter to get
17 it --

18 THE DEFENDANT: Okay.

19 THE COURT: If you want the court reporter to get
20 it down, you have to read it slow.

21 THE DEFENDANT: Okay. Decema Wallace, FBI G,
22 dated April the 22nd, 2003, cites even the family knew he
23 had something to do with it and blamed him for being the
24 last seen person on the porch before the shots was fired.
25 Let the record show that's four different eyewitnesses that

1 attested Tony York's involvement, his former sister-in-law,
2 the victim's little brother, which is his first cousin, a
3 neighbor, Willie Chandler, and Decema Wallace. That's more
4 than probable cause for warrant, that profit deal and
5 Liner's proffer deal and two different version -- two
6 different versions of Dozier and Liner.

7 Now, let's view the other perpetrators.

8 THE COURT: How many pages do you have to read?

9 THE DEFENDANT: This is it right here. It's 10
10 different eyewitnesses and I'm just breaking down the
11 eyewitness and do the motion, that's it. That's it, sir.

12 THE COURT: All right.

13 THE DEFENDANT: This is the last page. I'm at the
14 bottom of this page and this here.

15 THE COURT: If you have a motion to dismiss based
16 on what eyewitnesses have to say --

17 THE DEFENDANT: No, it's also based on 3161(b),
18 it's 30 days for indictment. As you can see by this Exhibit
19 A, sir, the indictment was 18 months late by Kelly Williams,
20 July the 7th, I think, of 2005 -- I mean, 2007, I think,
21 July the 5th, 2007. That's a technicality that supports the
22 speedy trial at 3161(c). It's eight years later. I put in
23 for a speedy trial several years ago when I had prior
24 counsel. None of that has been done and I manifested the --
25 four factors because this is none of my fault, sir. You've

1 got U.S. vs. Maryland and right now, what's going on right
2 now -- period. It's eight years, sir. It's
3 unconstitutional according to the law, sir. And I have
4 cases you may view, Peeples vs. Heally because this delay
5 violated the speed trial act --

6 THE COURT: If you're going to read it --

7 THE DEFENDANT: Okay.

8 THE COURT: -- you have to read slowly.

9 THE DEFENDANT: Okay.

10 THE COURT: I can't follow you.

11 THE DEFENDANT: Okay. Peeples vs. Heally, because
12 this delay violated the Illinois speedy trial act, we
13 reverse Heally's conviction and order his discharge. It's a
14 U.S. case that went to the supreme court and it's a murder
15 charge, also, sir. I would like to present that to you,
16 sir.

17 I can continue with other eyewitnesses?

18 THE COURT: Yes, sir.

19 THE DEFENDANT: Okay.

20 THE COURT: Now, if you're going to talk to me
21 about eyewitnesses who would exonerate you, then --

22 THE DEFENDANT: This -- these eyewitnesses here
23 has nothing to do with Mr. York. This is another person
24 here, sir, an eyewitness that was there when the money was
25 paid to the perpetrator.

1 THE COURT: First, give me their names. All I
2 want is their names right now.

3 THE DEFENDANT: Right now, I have Wakonda Cooper.

4 THE COURT: Who?

5 THE DEFENDANT: Wakonda Cooper.

6 THE COURT: Okay. Wakonda Cooper.

7 THE DEFENDANT: Arlo Fulton.

8 THE COURT: All right.

9 THE DEFENDANT: Todd Fulton. They attested
10 that --

11 THE COURT: I just want to know names. Arlo
12 Fulton, Todd Fulton?

13 THE DEFENDANT: Yes. Perrell Shaw, Irwin Scott,
14 Alphonso Pearson, Betty Ann Higgins, and that's it.

15 THE COURT: Okay. And what did they say?

16 THE DEFENDANT: Okay. Wakonda Cooper on May the
17 20th, 2002, FBI Exhibit H, states that Brockington, may he
18 rest in peace, paid to Steve Singletary, also known as Rab,
19 to F him up. He paid him 500-dollars.

20 THE COURT: Okay.

21 THE DEFENDANT: FBI H, FBI I, November the 19th,
22 2002, Perrell Shaw said that Steve Singletary told him he
23 was paid 5,000-dollars for the hit. On FBI J, Arlo and Todd
24 Fulton, March the 26th, 2002, gave description of Steve
25 Singletary with Cornelius -- plus Herb Brockington, may he

1 rest in peace, while they was in Lexington County Detention
2 Center stated not to talk about the shooting for fear of law
3 enforcement. On Irwin Scott, FBI K, April 22nd, 2003, Herb
4 Brockington paid someone to kill Mr. York, may he rest in
5 peace, and it was Rab Singletary who was involved in the
6 shooting. Alphonso Pearson, FBI L, May the 6th, 2002, cited
7 Mike Fulton, and the victim's mother, Ms. Sandra York,
8 knows -- saw people pay Marlin McKnight, who was involved in
9 the incident. Betty Ann Higgins, FBI M, dated May the 6th,
10 2002, who is the victim's ex, saw on the night of the murder
11 Rab's vehicle come pulling up in her yard and started
12 talking to her with someone else in the car after the murder
13 happened. Wakonda Cooper, FBI N, June 19, 2002, he passed a
14 polygraph test.

15 With rule 16 exculpatory documents vindicate me, I
16 should now put in speedy trial at Title 18, USC 3161 and
17 3174, writ of mandate motion to dismiss filed July 3rd of
18 2013, which is being filed today on -- on January the 27th,
19 2014. Now, reading the speedy trial act, the indictment
20 must be served in 30 days. My indictment was 18 months
21 later -- at 2:19 p.m. July 5th, 2007. And via U.S. vs.
22 Kirkland, 1997, it is not amenable to ever review, 31-61-C
23 speedy trial must be in 70 days. It is now eight years
24 later. Sir, each continuance must be set forth orally or in
25 writing by a judge for his reasons, Title

1 18-USC-3161(h)(8)(a). See exhibits -- I got exhibits that I
2 wrote Mr. Verdell Barr, may he rest in peace, before he
3 passed trying to get those documents for the continuance, et
4 cetera.

5 Here's all the documents, sir, I wrote. It was
6 written back for Mr. Verdell Barr.

7 THE COURT: When did he -- does anybody know when
8 he ceased being Mr. Moseley's attorney?

9 THE DEFENDANT: January the 29th, 2013, he excused
10 himself from the case due to a conflict of interest being
11 that Ms. Kimberly Barr was his relative.

12 THE COURT: Are y'all related, Ms. Barr?

13 THE DEFENDANT: That's what is stated in the
14 transcript.

15 THE COURT: I'm asking her, I'm not asking you.

16 Are y'all related in any way, Ms. Barr?

17 MS. BARR: No, sir.

18 THE COURT: Is there any transcript that you know
19 of or any court proceeding in which Mr. Barr did relate to a
20 judge that y'all were related?

21 MS. BARR: Judge, if he did, it wasn't in my
22 presence.

23 THE COURT: Mr. Moseley?

24 THE DEFENDANT: That's in that transcript, sir,
25 that I asked them for and I paid for two weeks ago. All of

1 that's in that transcript, sir.

2 THE COURT: Now, I've been around a long time.

3 THE DEFENDANT: Okay.

4 THE COURT: And I've asked the question many times
5 in the courtroom, Charles David Barr, Verdell Barr, and
6 another gentleman named William Barr in town, and, frankly,
7 none of them were related to each other except Verdell and
8 Charles.

9 THE DEFENDANT: He did state that's his reason for
10 recusing himself off the case.

11 THE COURT: Do you remember why Mr. Barr was
12 relieved, Ms. Barr?

13 MS. BARR: Judge, he indicated that the Defendant
14 had failed to comply with the terms of his retainer
15 agreement that required a payment of a 20,000-dollar fee.

16 THE COURT: Okay. All right.

17 You can continue, Mr. Moseley.

18 THE DEFENDANT: Also, this document here, I must
19 have skipped over it. That's to -- December the 23, 2013,
20 to Ms. Kimberly Barr and to Judge Newman attesting the
21 speedy trial act that I'm presenting now and motion to
22 dismiss and them stepping down themselves being that they
23 are defendants in a civil injunction case, Moseley vs.
24 Newman --

25 THE COURT: So you've sued who?

1 THE DEFENDANT: She's a defendant as well as Judge
2 Newman, Ms. Shuler, Mr. Verdell Barr, may he rest in peace,
3 the town clerk, Ms --

4 THE COURT: You filed that in federal court?

5 THE DEFENDANT: Yes, sir, it's on appeal now, sir.

6 THE COURT: All right, okay.

7 THE DEFENDANT: Okay. The government should never
8 rely on the defendant's unilateral waiver of his rights
9 under the act. The government must make sure the judge
10 enters an ends of justice continuance and sets forth his
11 reasons for doing so, see U.S. case Northern v. U.S. 9th
12 Circuit, 1972. The defendant did ask for copies of speedy
13 trial motions, trial motions from former private counsel, et
14 cetera. The speedy trial act in U.S. case James Rogers
15 Sikes vs. Superior Court 1973, sites Jones v. Superior
16 Court, defendant's rights should likewise not be spiteful by
17 the neglect of those officially concerned. Also, citing the
18 only duty placed upon an accused in protecting his right to
19 a speedy trial is to object when his trial is set forth for
20 the date beyond the statutory period.

21 THE COURT: So you should -- you say the case
22 should be dismissed because you were tried not in a speedy
23 fashion?

24 THE DEFENDANT: Yes, sir, that also, sir.

25 THE COURT: All right.

1 THE DEFENDANT: Then move to dismiss once that
2 period expires or merely move to dismiss if the statutory
3 period expires by trial date being set. The petitioner done
4 this and more, although not required of him to perfect his
5 speedy trial claim, petitioner, in fact, repeatedly
6 attempted to remind the authorities of his status and of the
7 need of his speedy trial and no circumstances which suggest
8 that he waived his right to a speedy trial. The risk of
9 clerical error or neglect on the part of those charged with
10 official action must set with the people not with the
11 defendant in a criminal case. That's U.S. case Plezberg vs.
12 Superior Court, 1971. U. S. case -- vs. North Carolina,
13 1966, clearly cites the right to a speedy trial is a
14 fundamental right secured by the Sixth Amendment to the
15 federal constitution --

16 THE COURT: I understand your -- I understand your
17 right to a speedy trial.

18 THE DEFENDANT: Yeah.

19 THE COURT: How is that -- how has that been
20 violated, if you can explain that to me?

21 THE DEFENDANT: It has been violated through the
22 presumption of -- I can't pronounce that word, prejudice
23 that I presented with State v. Maryland. The Feds
24 investigated this case from 2003 to 2006 and did not inquire
25 any of this, sir. They did not -- that's -- I presented

1 that in 3161(b), the indictment was 14 months or 18 months
2 later, 3161(c) --

3 THE COURT: When was he first indicted, Ms. Barr?

4 MS. BARR: Judge, it looks like he was arrested
5 January the 31st of 2006 and he was indicted, I believe, in
6 July of 2007.

7 THE COURT: And the explanation for five years, do
8 you know?

9 MS. BARR: Between the time of the offense and the
10 time of his arrest?

11 THE COURT: Yes, ma'am.

12 MS. BARR: Judge, I'm not sure, except that the
13 case file would seem to suggest that initially there was a
14 belief that Steve "Rab" Singletary was the person who
15 committed the crime. And then later investigations by the
16 Federal Bureau of Investigation and some inmates who were in
17 federal custody as a result of continued investigation, it
18 was determined that Mr. Moseley was the one that committed
19 the murder.

20 THE COURT: Okay.

21 You can continue, Mr. Moseley.

22 THE DEFENDANT: Okay. I shall quote from the last
23 case speedy trial act, it's a murder case, U.S. case called
24 Peeples vs. Heally, 1997, because the delay by the State
25 violated the speedy trial act, we reverse his conviction and

1 order his discharge.

2 THE COURT: You've already cited that case.

3 THE DEFENDANT: Yes, sir. Quoting this case
4 that's quoted in there. This is here right here, then I'm
5 through, sir.

6 THE COURT: Okay.

7 THE DEFENDANT: I was just doing it slow like you
8 said.

9 THE COURT: All right.

10 THE DEFENDANT: Okay. Quote of Peeples vs.
11 Roberon, R-O-B-E-R-O-N, 1977. It is State's job to bring
12 the criminal case to trial. Here, clearly, there was no one
13 else no sense here, clearly -- excuse me, there was no sense
14 of urgency while the test results were awaiting. In short,
15 he had no obligation to bring his own case to trial nor did
16 he have a duty to warn he wanted a discharge. With all due
17 respect, I move for a dismissal of frivolous charge with
18 motion to dismiss filed July 5th, 2013, with amended motion
19 filed January the 27th, 2014 via South Carolina -- also, via
20 South Carolina rules of criminal procedure Rule 48 granting
21 the trial court discretion to dismiss cases that are not
22 brought to trial promptly. Also, U.S. case State v.
23 Bellinger, 1974, almost 11 months -- prejudice to the
24 defense. And finally, the South Carolina rules of criminal
25 procedure 48(b) authorizes the trial court to dismiss

1 indictments where there is unnecessary delay in presenting
2 the charge to the grand jury and filing the information of
3 bringing the defendant to trial. Asa lama lakum.

4 THE COURT: What's that last thing?

5 THE DEFENDANT: Asa lama lakum.

6 THE COURT: What does that mean?

7 THE DEFENDANT: May peace be upon you.

8 THE COURT: All right.

9 Mr -- excuse me, Ms. Barr, first of all, I would
10 like to hear from you about what I interpret Mr. Moseley to
11 say that there is some exculpatory evidence pertaining to
12 involvement of a Tony York. Do you know anything about
13 that?

14 MS. BARR: Yes, sir. Judge, during the course of
15 the FBI investigation, there was a witness -- and I'm not
16 sure of her name right now, but there was a witness who
17 reportedly saw Tony York, who may have been related to the
18 victim, shortly after the murder come running to someone's
19 house and he had blood on his shirt.

20 THE COURT: Okay. And is Mr. York, perhaps,
21 related -- just from my information, related to the victim?

22 MS. BARR: I believe he is, Your Honor.

23 THE COURT: Okay. And do you know where Mr. Tony
24 York is?

25 MS. BARR: I do not, Your Honor.

1 THE COURT: Do you know who he is? I mean, is he
2 a local to your knowledge?

3 MS. BARR: Judge, I'm not sure whether --

4 THE COURT: Okay.

5 MS. BARR: If you'll give me a second. I'm not
6 sure whether he is a local or not.

7 THE COURT: And the name of the witness who said
8 that she saw him, do you have any contact with that witness?

9 THE DEFENDANT: You speaking to me or her, sir?

10 THE COURT: (indicating).

11 MS. BARR: Judge, I did not.

12 THE COURT: What's her name, sir?

13 THE DEFENDANT: Keisha Burgess.

14 THE COURT: Keisha Burgess.

15 THE DEFENDANT: Keisha Burgess, also -- York and
16 Andy White. All of them attest to him being at the scene
17 with blood on his shirt.

18 THE COURT: Do know their whereabouts?

19 THE DEFENDANT: No, sir, I -- I don't have -- I
20 meant to say this, sir. I haven't found out any of the
21 information until I received my Rule 5 and Rule 14 exhibits
22 last year sometime, sir. The whole seven years I knew none
23 of this, sir.

24 THE COURT: When last year did you get that
25 information?

1 THE DEFENDANT: Some of the information I got
2 about March and some April.

3 THE COURT: Of last year?

4 THE DEFENDANT: Yes, sir. That's when I first did
5 the first motion. And the reason I had to redo the motion
6 because I didn't put --

7 THE COURT: Okay.

8 All right. Go ahead, Ms. Barr.

9 MS. BARR: And, Judge, if I may just comment as to
10 that, the initial Rule 5 discloser was sent out to
11 Mr. Verdell Barr, who was the Defendant's then counsel of
12 record on November the 2nd of 2007. The case was initially
13 noticed for trial in December of 2007 at counsel's request.
14 The case was continued.

15 THE COURT: And that's Mr. Barr's request?

16 MS. BARR: Yes, sir.

17 THE COURT: In 2007?

18 MS. BARR: Yes, sir. I believe that the clerk's
19 record should reflect that in 2007, 2008, 2009 and 2012
20 bench warrants were issued against the Defendant, Arthur
21 Moseley, for failure to appear. And, Judge, certainly, that
22 hampered our ability to bring the case forward for trial
23 because a lot of judges understandably are hesitant to try a
24 defendant in his absence when he's charged with the offense
25 of murder.

1 THE COURT: So he was bench warranted in 2008,
2 nine, ten --

3 MS. BARR: I know for sure Judge Cochran issued a
4 bench warrant on May 7, 2007. Judge Milling issued a bench
5 warrant on March 12th of 2008. Your Honor issued a bench
6 warrant on March 13th of 2009. And Judge Newman issued a
7 bench warrant in October of 2012. And I believe there may
8 be another bench warrant contained within the clerk's file.

9 THE COURT: Okay. And when was he apprehended on
10 the latest bench warrant?

11 MS. BARR: Judge, I believe it was either the end
12 of December of 2012 or the very beginning of January 2013.
13 And he did not turn himself in. He had to be picked up
14 either at his home or at a relative's home.

15 THE COURT: Okay. You can continue.

16 MS. BARR: And so, Judge, as it relates to his
17 motion to dismiss for failure of the State to comply with
18 his request for a speedy trial, I'm not sure that I got a
19 clear understanding as to when he filed the motion for a
20 speedy trial. Obviously, if it were last year, one of the
21 things that was an issue he's written me a couple of times
22 about was his failure to be evaluated for competency and
23 criminal responsibility.

24 THE COURT: Has he been evaluated?

25 MS. BARR: He has. The evaluation took place on

1 August the 28th of 2013, reports were issued in September.
2 Judge Newman had a hearing on his motion -- or the
3 evaluations related to his competency and criminal
4 responsibility and found based on the reports, which were
5 statutorily admitted, that he was, in fact, competent to
6 stand trial. And although he denied his guilt as related to
7 the offenses that at the time the offenses occurred, he
8 did -- he was criminally responsible for his actions to the
9 extent that he could distinguish moral and legal right from
10 moral and legal wrong and he did have the capacity to
11 conduct his conduct to requirements of the law.

12 THE COURT: How about competency?

13 MS. BARR: He was competent to stand trial. The
14 orders have been drafted and they're in the process of being
15 mailed to Judge Newman. I also had Ms. Butcher to review
16 those proposed ordered.

17 THE COURT: When did Judge Newman have that
18 hearing?

19 MS. BARR: I believe last Tuesday, Your Honor, the
20 21st.

21 THE COURT: Oh, I thought you said it was sometime
22 in September?

23 MS. BARR: The reports were dated in September.
24 The competency and criminal responsibility reports were
25 dated in September.

1 THE COURT: All right. The hearing was last --
2 what?

3 MS. BARR: Last Tuesday, July -- January the 21st.

4 THE COURT: And Judge Newman found him to be
5 competent and, also, criminally responsible under
6 McNaughtin?

7 MS. BARR: Yes, sir. And, Your Honor, also, Judge
8 Newman also found that he was capable of representing
9 himself pursuant to -- that order has also been drafted and
10 will be shared with the Defendant and --

11 THE COURT: All right.

12 Now, the witnesses he went over were Wakonda
13 Cooper, Arlo Fulton, Todd Fulton, Perrell Shaw, Irwin Scott,
14 Alphonso Pearson and Betty Ann Higgins. Do you have
15 statements from those witnesses?

16 MS. BARR: I have statements, not to the sense
17 that they are transcribed statements of the witnesses
18 themselves, but they are statements written down by law
19 enforcement. And those have been provided to the Defendant.

20 THE COURT: They've all been provided?

21 MS. BARR: Yes.

22 THE COURT: And I notice that some of those
23 people, if not all -- well, some of them, if not most are on
24 your potential witness list?

25 MS. BARR: Yes, sir.

1 THE COURT: Do you intend to call any of those
2 possible witnesses?

3 MS. BARR: Judge, I intend to call Wakonda
4 Cooper -- and I'm sorry, what were the other names?

5 THE COURT: Arlo Fulton, Todd Fulton, Perrell
6 Shaw, I think you said Irwin Scott.

7 MR. CARROWAY: Todd and Arlo Fulton are the same
8 person.

9 THE COURT: Irwin Scott, Alphonso Pearson, Betty
10 Ann Higgins.

11 MS. BARR: I do not intend to call Betty Ann
12 Higgins or Alphonso Pearson. Mr. Pearson is in SCDC. I
13 believe he may be at Evans Correctional Institute.

14 THE COURT: Up in Bennettsville?

15 MS. BARR: I'm not sure where it is, Judge. But
16 my last notice indicates that he's in Evans. And Mr.
17 Fulton, I do intend to call him.

18 THE COURT: You do?

19 MS. BARR: Arlo Fulton, yes, sir.

20 THE COURT: How about Perrell Shaw and Irwin
21 Scott?

22 MS. BARR: Not Irwin Scott and, perhaps, Mr. Shaw,
23 depending on how the evidence goes.

24 THE COURT: Okay. Do you know their whereabouts
25 or did you at any time know their whereabouts?

1 MS. BARR: Mr. Fulton, yes, Your Honor --

2 THE COURT: No, I'm talking about other than
3 Wakonda Cooper, Arlo Fulton, do you know any of the other's
4 whereabouts?

5 MS. BARR: I'm not sure I ever heard of the Scott
6 individual.

7 THE COURT: Perrell Shaw?

8 MS. BARR: Perrell Shaw, I did have his address,
9 but it was based on the information that was contained
10 within the FBI file and this was, Judge, probably 10 years
11 ago.

12 THE COURT: Alphonso Pearson?

13 MS. BARR: Yes, he's the gentleman who's in --

14 THE COURT: Evans.

15 MS. BARR: Yes, in SCDC.

16 THE COURT: And Betty Ann Higgins?

17 MS. BARR: I do not have any information on Betty
18 Ann Higgins.

19 THE COURT: Do you know their whereabouts, Mr.
20 Moseley?

21 THE DEFENDANT: No, sir, Your Honor. I came into
22 these documents last year and I just attempted to do the
23 motion and I presented you those documents.

24 THE COURT: Okay.

25 THE DEFENDANT: I have no knowledge of there they

1 at.

2 THE COURT: Okay.

3 THE DEFENDANT: I would like to get a chance to
4 address these bench warrants.

5 THE COURT: We'll do that. Okay. And we're going
6 to get moving here because we've got to all take a break
7 before we begin the trial.

8 So Ms. Barr, Mr. Moseley, also, alleges -- you
9 talked about the pre-indictment and the post-indictment
10 delay. Do you care to respond to any of those other
11 comments or motions?

12 MS. BARR: Yes, Your Honor. I do know for some
13 period of time that Mr. Moseley was in the department of
14 corrections, but I think it was prior to his arrest.

15 Your Honor, within less than two years following
16 his arrest, we were in a position -- we were ready for trial
17 and that was in December of 2007. And so the fact that his
18 attorney at the time requested that the State not call the
19 case for trial after we had subpoenaed witnesses, certainly,
20 we would ask the Court not to hold that against the State in
21 as much as that was made at the request of the Defendant
22 through his counsel.

23 Your Honor, after that point in time, Judge, there
24 were several periods of time when Mr. Moseley was -- his
25 whereabouts were unknown, so we were not in a position to

1 try it. We got geared up again, issuing subpoenas and doing
2 writs of habus corpus to get federal inmates back. We were
3 in a position and called the case for trial in October of
4 2012. And, again, his counsel at that requested a
5 continuance.

6 THE COURT: Who was that?

7 MS. BARR: That was Mr. Barr. And, Judge, it was
8 in part -- to be candid and to be fair, Mr. Barr was having
9 some health issues and problems with his vision at that
10 time.

11 THE COURT: In late 2012?

12 MS. BARR: Yes, sir.

13 THE COURT: Okay.

14 MS. BARR: And he also requested at that time to
15 be relieved as counsel.

16 THE COURT: And you said that motion was granted
17 in late December or early January, 2012 or 2013?

18 MS. BARR: Yes, sir. The motion was granted on
19 January 29th of 2013.

20 THE COURT: Okay. Anything else at this stage,
21 Ms. Barr?

22 MS. BARR: Judge, just the only other thing he
23 mentioned that I was a defendant on a federal case and he
24 mentioned that last Tuesday. And, candidly, I did not
25 believe him until I googled him, his name over the weekend

1 and he had, in fact, filed some sort of civil claim in
2 federal court against all of the parties that he named. The
3 case was dismissed on appeal as of the 24th of January. And
4 it had even gotten to the point where the magistrate
5 recommended the clerk not even issue the summons on it
6 because the complaint on its face was without merit. So I
7 just have that.

8 THE COURT: Mr. Carraway, do you have in response
9 or anything to add?

10 MR. CARRAWAY: Nothing, Your Honor.

11 THE COURT: All right.

12 Mr. Moseley, anything -- you said you wanted to
13 respond to her comments about the bench warrants?

14 THE DEFENDANT: Yes, sir. There's only been one
15 technical bench warrant placed on me and -- I asked last
16 week and that was 2007 because I missed one day. I was
17 staying in -- and I did not have no transportation. I spent
18 two hours in the county jail. That's the only bench warrant
19 that's ever been placed on me until October 29th, 2012, sir.

20 THE COURT: Where have you been during the
21 interim?

22 THE DEFENDANT: Right there in --
23 , sir. They know my address. They know my family
24 house. I have not been on the run on this case, sir. I
25 have not been on the run.

1 THE COURT: Were you in touch with Mr. Barr to any
2 degree during that five years?

3 THE DEFENDANT: Yes, sir. Yes, sir. But I did
4 not consent for no continuances. I did not consent for no
5 continuances, sir, that's why I ask Mr. Barr for his records
6 for those files of any continuances he did -- ends of
7 justice documents, et cetera. I have not received none from
8 him. She cannot produce none. These bench warrants are of
9 no merit. She cannot produce all these bench warrants she
10 said, sir.

11 THE COURT: Okay.

12 THE DEFENDANT: She can't. And the bench warrant
13 for October 29th was due to me being in the psychiatric
14 hospital. I was in Carolina Hospital.

15 THE COURT: Of what year?

16 THE DEFENDANT: 2012.

17 THE COURT: October --

18 THE DEFENDANT: October 29th. Here's the document
19 to that, sir.

20 THE COURT: What was your condition?

21 THE DEFENDANT: I had suicidal and homicidal
22 thoughts, sir. I was robbed and shot at four times. I went
23 to Carolina Hospital on October the 29th, 2012. They had
24 a roll call I had no knowledge of. The documents will
25 attest to you that the first 48 hours you're not allowed to

1 make no calls. The evidence is right there. According to
2 Exhibit C, she called that morning and stated that the State
3 needed documents and Mr. Dennis from PD Mental Health and
4 Ms. Kim from Carolina Hospital did fax the court the
5 documents. She stated that she did not receive it. And
6 November the 2nd, 2012, I was transferred to MUSC, sir.

7 THE COURT: You agree that in October of 2012, you
8 weren't in any shape to go to trial?

9 THE DEFENDANT: No, sir. I was messed up, sir.
10 Nobody informed me of no trial, sir. They put a bench
11 warrant on me for my medical issue, that's why I issued the
12 disability act.

13 THE COURT: No, it's not.

14 THE DEFENDANT: I have cases in that motion to --

15 THE COURT: I'll review them. I'll review them.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: But you were not able to go to trial
18 in October of 2012?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Well, that's what she said.

21 THE DEFENDANT: I had no knowledge of trial, but
22 they issued a bench warrant and incarcerated me stating as
23 if I missed the roll call intentionally. I had no
24 knowledge.

25 THE COURT: Well, that won't come out in the

1 trial. That's background material.

2 THE DEFENDANT: I'm still locked up now, sir,
3 because of that bench warrant. That's what I'm telling you,
4 sir. I was locked up January the 7th, not knowing that they
5 put a bench warrant on me October the 29th, 2012. They
6 locked me up January 7, 2013. On the 29th of that month,
7 they denied the bench warrant because she said she received
8 no documents and Exhibit C says she did.

9 THE COURT: Okay. All right. You spent a little
10 bit of time in jail on that?

11 THE DEFENDANT: I spent a year, sir, I'm still
12 locked up.

13 THE COURT: Oh, okay, you've been in jail a year
14 on that bench warrant?

15 THE DEFENDANT: Yes, a year because of this bench
16 warrant and I was in the psych ward. You can't fault me.

17 THE COURT: All right.

18 THE DEFENDANT: And they --

19 THE COURT: I'm not faulting you for anything --

20 THE DEFENDANT: No, not --

21 THE COURT: Wait. wait. Don't interrupt me. If
22 I'm talking, you stop talking.

23 THE DEFENDANT: Okay.

24 THE COURT: That's what Ms. Barr does, that's what
25 Mr. Carraway does. If I'm talking, you stop.

1 THE DEFENDANT: Okay.

2 THE COURT: All right. Now, I'm not here to
3 decide any issues pertaining to whether or not a bench
4 warrant was wrongfully entered against you. That's not part
5 of your motion.

6 THE DEFENDANT: Okay.

7 THE COURT: That's a civil dispute that has
8 nothing to do with these charges. Now, is there anything
9 you want to tell me in response to what Ms. Barr has said
10 about these witnesses or this pre-indictment,
11 post-indictment delay?

12 THE DEFENDANT: I had nothing, no consent on
13 continuing this stuff, sir. And I made my motion in April
14 of last year, then in July. They denied. All my motions
15 were not filed. I had no appointed attorney to process my
16 motion. That is no fault of mine.

17 THE COURT: And that's the motion to dismiss?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the motion for --

20 THE DEFENDANT: Two motions to dismiss. I had a
21 motion to -- the judge, a motion to relieve the judgment
22 based on the bench warrant. I had a motion for change of
23 venue, also, sir. No motion was done by either counsel.

24 THE COURT: Okay. Do you have any additional
25 motions other than what you've put on the record today?

1 THE DEFENDANT: No, sir, that's all my motions,
2 but you can have this affidavit from my -- this is my PI
3 attesting to what he found in the case, sir.

4 THE COURT: All right. I'll be here during the
5 lunch hour and a half reviewing all of your material and
6 I'll make a decision on the motion to dismiss. And I will
7 let everybody know what this is. If everybody can be back
8 in the courtroom at about five minutes to three. And if I
9 grant his motion, I will release the jury and the State can
10 appeal. If I deny your motion, we'll go ahead with the
11 trial.

12 Now, one instruction before we begin, Mr. Moseley,
13 or kind of a heads up, if I don't -- if I grant your motion,
14 we'll be finished. Okay.

15 THE DEFENDANT: (The witness nodded head.)

16 THE COURT: If I deny your motion, we will begin
17 with the trial this afternoon. We will probably go for a
18 couple of hours. Ms. Barr will give an opening statement to
19 the jury. Mr. Carraway will give an opening statement to
20 the jury. And you will be entitled, if you want, as Mr.
21 Carraway will, you will have the right to make an opening
22 statement. I just remind you that you can't testify during
23 your opening statement. You can tell the jury what you
24 believe the evidence or lack of evidence will or will not
25 establish. It's not intended to be a full blown

1 presentation of evidence by you. That will have to come
2 through witnesses and other things that are introduced into
3 evidence. Ms. Butcher will be seated as close to you as you
4 want her to be. If she's your standby counsel, she can be
5 seated right beside you, but she's not going to be at that
6 end of the table (indicating), okay, because if you have any
7 questions you want to ask her to get any input on what you
8 should do or say or ask, you can ask her, but she will not
9 be speaking to the Court unless I specifically ask.
10 Likewise, y'all aren't co-counsel, so both of you won't be
11 able to question a witness. It will be you or no one since
12 you're acting as your own attorney. So that's the way we'll
13 work that. Okay.

14 THE DEFENDANT: (The witness nodded head.)

15 THE COURT: All right. We're adjourned until five
16 minutes to three.

17 (Whereupon, a luncheon recess was held.)

18 THE COURT: All right. I've reviewed the
19 materials provided to me by Mr. Moseley, also, considered
20 his arguments and, also, Ms. Barr's arguments. Mr.
21 Moseley's motion to dismiss all of the charges is denied. I
22 accept -- first of all, I accept Ms. Barr's explanation
23 about the bench warrants as her role as an officer of the
24 court. The -- any delay, first of all, post-indictment was
25 result of a request made by Mr. Moseley's attorneys or

1 attorney, obviously, acting in his behalf at the time after
2 the initial trial date in 2007 or 2008 was continued by the
3 request of Mr. Verdell Barr. Mr. Moseley absented himself
4 from the proceedings by virtue of not appearing and bench
5 warrants were issued.

6 One concern that I do have, Ms. Barr, is any -- I
7 want to make sure that all exculpatory material in your
8 possession or in law enforcement's position is turned to Mr.
9 Moseley either to him or to his former attorneys. Has that
10 been done?

11 MS. BARR: Judge, I was going to raise that as an
12 issue when we came back on the record.

13 Judge, I have a list of 42 items, 41 of which were
14 handed over to Mr. Barr back in 2007.

15 THE COURT: Okay.

16 MS. BARR: The 42nd item on the list was just
17 simply evidence that was available for his inspection.

18 THE COURT: That list was given to him?

19 MS. BARR: Yes, sir. I also gave that list --
20 just the list, not the items themselves to Ms. Butcher. My
21 understanding was that Ms. Shuler, who was appointed after
22 Mr. Barr was relieved, also received those documents along
23 with the list. Mr. Moseley left a four-minute message on my
24 voice mail on Friday asserting that certain things he did
25 not have, that he has since alluded to this morning, so I

1 just want to make sure that the items that he has indicated
2 that he does not have, if they are things within my file,
3 then I, certainly, would want to address those, but my
4 entire case file, essentially, with the exception of my
5 private notes were turned over to Defense counsel in 2007.
6 But I will be happy to -- if he believes there's certain
7 items that he does not have for whatever reason, I'll be
8 happy to turn those over.

9 THE COURT: All right. Then that will, certainly,
10 be done.

11 Now, Lonnie Dozier, will he be testifying?

12 MS. BARR: Yes, sir.

13 THE COURT: All right. Do you -- do you have a
14 copy or the information pertaining to his proffer agreement
15 or the reduction in sentence agreement?

16 MS. BARR: Your Honor, the only thing I have is a
17 copy of the statement that he gave to Agent Flamini.

18 THE COURT: But he did receive a reduction in
19 sentence because of information pertaining to this case?

20 MS. BARR: Not that I'm aware of. My
21 understanding is that his agreement was that he would not be
22 prosecuted for any crimes in connection with the state --
23 with whatever statements he gave. Mr. Moseley indicates
24 that he has a proffer agreement that he handed to the Court.
25 I've never seen it.

1 THE COURT: It's bits and piece of what appears to
2 be a transcript. It's hard to determine from reading it
3 what exactly he's talking about. Was Mr. Liner also
4 inculcated as a result of Mr. Dozier's statements to the
5 FBI?

6 MS. BARR: He was.

7 THE COURT: All right. Now, when Mr. Dozier
8 testifies -- of course, Mr. Carraway knows this, both of you
9 will have the right at separate times to examine him
10 thoroughly on any reduction in sentence he may have received
11 as a result of his -- the information he provided in this
12 case. I think, Ms. Barr, it goes without saying that he did
13 receive a reduction in sentence.

14 MS. BARR: Judge --

15 THE COURT: I don't think there's any dispute
16 about that. The question is why did he get that?

17 MS. BARR: Your Honor, and I don't -- quite
18 frankly, I don't know that he did receive a reduction. My
19 understanding is that he has been in jail since 2002 and he
20 got a 27-year sentence. And I don't believe he's scheduled
21 to get out until 2020.

22 THE COURT: Well, that's only 18 years. I thought
23 -- well, the information I saw was that he got a 327-month
24 sentence, that is 25, 26 years.

25 MS. BARR: Yes, sir.

1 THE COURT: And according to what Mr. Moseley
2 handed up -- and again, I assume these are authentic
3 documents. It's got the Pacer headliner material. It looks
4 like -- it is hereby -- it is ordered that the previous term
5 of imprisonment of 327 months is hereby reduced and the
6 defendant is committed to the custody of the Bureau of
7 Prisons for 240 months.

8 MS. BARR: Okay.

9 THE COURT: I don't know when he's going to
10 testify today, tomorrow or whenever it might be, but,
11 perhaps, when he is called, we can do it initially at such a
12 time to allow us to explore that.

13 MS. BARR: Yes, sir.

14 THE COURT: So that Mr. Carraway and Mr. Moseley
15 will have full knowledge of what that situation involves.

16 MS. BARR: Yes, sir.

17 THE COURT: All right.

18 SOLICITOR: And, Judge, he'll testify this
19 afternoon.

20 THE COURT: He'll testify this afternoon?

21 MS. BARR: Yes, sir.

22 THE COURT: So he's in the back?

23 MS. BARR: Yes, sir.

24 THE COURT: Will he be your first witness?

25 MS. BARR: Yes, sir.

1 THE COURT: Okay. Now, what I have that Mr.
2 Moseley gave me is a U.S. District Court captioned document
3 from May 29, 2003, relating to four counts of some sort.
4 And that is followed by the history -- you know, on the
5 Pacer website, there's a history of entries into the case
6 record and that is when -- March 22, 2010, is when
7 Mr. Dozier's sentence was officially reduced. So we'll have
8 to explore that at an appropriate time. He made a motion to
9 reduce the sentence April 30, 2009, and that would be the
10 35(b) motion.

11 Is that correct, Mr. Moseley?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. That is just something I
14 think all parties might want to have their eyes open about.

15 Okay. Now, my ruling is on the record. I do have
16 your affidavit and your report -- or letter, excuse me, from
17 the private investigator. I've taken that into
18 consideration. These witnesses were, certainly, available
19 to be located and interviewed at all times since you were
20 charged with the offense. And the fact that John Davis, the
21 investigator, has had difficulty in locating them during the
22 last two months is not sufficient reason to have the case
23 dismissed or even continued.

24 Now, Mr. Moseley, I want to make sure you
25 understand one procedural thing, if Ms. Barr -- if something

1 occurs during the trial and an objection is made, for
2 example, by Mr. Carraway, you must -- under our rules, if
3 you want to join in that objection, you must stand up and
4 say so.

5 THE DEFENDANT: (The witness nodded head.)

6 THE COURT: Because if the record reveals that
7 only Mr. Carraway objected, then you will not have preserved
8 that right for yourself. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Even veteran lawyers sometimes forget
11 that. Even if you stand up and just say me, too, Your
12 Honor, that's fine.

13 Now, the opening statements will be Ms. Barr
14 first --

15 Mr. Carraway, does it suit you to go first?

16 (There was no response.)

17 THE COURT: Mr. Carraway, does it suit you to go
18 first on the opening?

19 MR. CARROWAY: Yes, your Honor.

20 THE COURT: Okay.

21 And what I tell the jury, typically, Mr. Moseley
22 is that you can give an opening statement if you want to.
23 You don't have to. You can wait until the State rest to
24 give your opening. I'll leave that up to you and
25 Mr. Carraway.

1 All right. You ready to go, Ms. Barr?

2 MS. BARR: State's ready, Your Honor.

3 THE COURT: Mr. Carraway, is the Defendant Liner
4 ready to proceed?

5 MR. CARROWAY: Yes, your Honor.

6 THE COURT: Mr. Moseley, are you ready to proceed?

7 THE DEFENDANT: I have one question.

8 THE COURT: All right. Stand up so I can hear
9 you, please.

10 THE DEFENDANT: I have one question, sir,
11 pertaining to documents that I handed you.

12 THE COURT: Yes, sir.

13 THE DEFENDANT: I can present these to the jury,
14 right?

15 THE COURT: It depends. We have rules of evidence
16 and the rules of procedure. If the documents are considered
17 to be hearsay, you cannot. There are exceptions to the
18 hearsay rule and there are all kinds of different kinds of
19 rules pertaining to authenticity of documents, in other
20 words, are they real, in other words, made by the agency or
21 person who is presented to be author and number two, whether
22 they might be hearsay. Typically, documents are not
23 introduced as a matter of course. It all depends on the
24 setting and what rules, if any, that might allow them to be
25 admitted or what rules that require them to be excluded.

1 Okay. Now, these all can be marked as Court's exhibit or
2 exhibits for ID and you can offer them at the appropriate
3 time. Typically, that is done through a testifying witness.

4 THE DEFENDANT: Through a testifying witness?

5 THE COURT: Yes, sir.

6 THE DEFENDANT: So whoever the witnesses are,
7 their statements, that's what you mean by that?

8 THE COURT: You might be able to get in their
9 statements or talk to the witnesses about their statements
10 when they're on the witness stand.

11 THE DEFENDANT: Okay. Do you know if the State
12 made any potential contact with witnesses that --

13 THE COURT: I do not -- she indicated that --
14 Wakonda Cooper, I don't know if that's male or female, Arlo
15 or Todd Fulton would be called to testify in this
16 proceeding. Those are the ones that you mentioned.

17 All right. Are you ready to proceed?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. If you can bring in the
20 jury.

21 (Whereupon, the jury returned to the
22 courtroom at 3:06 p.m.)

23 THE COURT: All right. Ladies and gentlemen,
24 we're ready to begin the trial of this case. Before we,
25 actually, do begin, you are going to be administered a new

1 oath.

2 Ms. Stagger, you can administer the oath.

3 THE CLERK: Please stand and raise your right
4 hand.

5 (Whereupon, the jury was duly sworn.)

6 THE CLERK: You may be seated.

7 THE COURT: All right. Now, ladies and gentlemen,
8 before we begin with the opening statements and the
9 presentation of evidence, I want to talk to you for just a
10 few minutes about what your responsibilities are. The oath
11 that you just took, the end of it says that you will well
12 and truly try this case according to the evidence and the
13 law so help you God. And that's, certainly, what the
14 parties intend for you to do. I'm going to talk to you a
15 few minutes about how the case will proceed in general, what
16 your responsibilities are and what my responsibilities are.

17 Now, first of all, do not ever take any -- from
18 anything that I say or do that I believe you should take or
19 reach one particular conclusion over another. As I will
20 tell you in more detail in a moment, my job is to preside
21 over this case as the judge of the law. You are the judges
22 of the facts. You will note that when the jury was
23 selected, the parties selected you. I did not. I sat up
24 here and made sure that the process went as the law says it
25 should go, but I did not pick you. The parties did that.

1 You will also notice that when the evidence is
2 presented during this case, it will be presented to you. In
3 many instances, I will never even see the evidence. I will
4 never even look at it. There is a difference if there is a
5 legal dispute as to the evidence, then I will look at it.
6 The reason that most of that does not matter is because it
7 does not matter what I think about the evidence. It only
8 matters what you think about it. All right. Now, you are,
9 again, the judges of the facts. So, again, don't take from
10 anything I say or do that I favor one particular result over
11 another.

12 So you may be sitting there saying well, what in
13 the world do I do? Job number one and your job throughout
14 this trial, pay attention. The parties have come this far
15 to put the case before you and you cannot use this week as
16 an opportunity to doze off, not pay attention or otherwise
17 do anything that prohibits you from listening to, looking at
18 and considering all of the evidence in this case because the
19 case -- all cases are too important for jurors to decide
20 they just don't want to pay attention.

21 Now, one of the responsibilities you will have in
22 this case is evaluating the believability of witnesses who
23 testify. You've seen that on TV when a witness is
24 testifying from the witness stand. That's the way it's
25 going to be here. People will be called to the stand or

1 otherwise, raise their right hand and swear or affirm that
2 they will tell the truth, the whole truth and nothing but
3 the truth. It will be your responsibility to determine
4 whether or not you believe what that witness is telling you.

5 Everyday when you watch somebody testify -- or
6 excuse me, talk, even on television, across the desk or at
7 the store, you're trying in your mind's eye, at least,
8 subconsciously to decide whether or not you believe them.
9 And how do you do that? You use your good old-fashioned
10 common sense. You can take anything that you want to into
11 account in determining whether or not you believe what
12 somebody is saying. You can take into account whether or
13 not that particular witness has -- or is hesitant or is
14 straight forward when the witness is answering questions.
15 We call that demeanor. You can also take into account in
16 your mind well, what was that witness's ability to know what
17 he or she claims to know. You can also take into account
18 whether or not the witness has said something different or
19 the same on a prior occasion, or whether or not that witness
20 might have a reason to say what he or she is saying, in
21 other words, a bias or a prejudice for or against one
22 outcome or another. Also, you can take into account
23 anything else that you think is appropriate within your
24 common sense. You can believe every word of what a witness
25 has to say if that's what you want to do. You can

1 disbelieve every word or you can believe parts of it and
2 disbelieve the rest.

3 Now, what you cannot do is after you hear a
4 witness testify, you cannot go to your jury room and talk
5 about what you just heard. You can't talk about what you
6 just saw. You can't talk about this case at all amongst
7 yourselves or anyone else in the world until I tell you that
8 you can. For example, we may take a break this afternoon
9 during the middle of or maybe at the end of a witness's
10 testimony, you can't go back there and say what did you
11 think about that? Keep it to yourself. You can talk about
12 the weather because that will be something to talk about.
13 You can talk about sports. You can talk about politics.
14 You can talk about anything you want, but you can't talk
15 about this case until I tell you that you can.

16 Now, ladies and gentlemen, also during the course
17 of the trial, evidence is going to come to you in different
18 ways. I mentioned testimony. That's when witnesses stand
19 -- sit there and testify in response to questions. Also,
20 you can expect that evidence will come in by way of an
21 exhibit. An exhibit is, typically, something that you can
22 see or touch in any given case. It might be an automobile
23 tire. It might be a piece of paper with words on it. It
24 might be a photograph. It could be any one of a number of
25 things. I've been involved in trials where there were over

1 150 exhibits. I doubt that there will be that many in this
2 case, but there might be.

3 An exhibit and testimony is what we covered so
4 far. Another way evidence comes, it's more rare, is by way
5 of stipulation. That's when all of the sides agree that a
6 fact or a certain set of facts is true. If that's happens,
7 then we'll, certainly, let you know that that stipulation
8 has been reached.

9 If evidences comes in, you can consider it. If I
10 exclude evidence, you can't consider it. If I order you to
11 disregard something you have just seen or heard, under the
12 oath that you've just taken to follow the law, you must
13 disregard it because the law says that if I tell you to
14 disregard it, you have to.

15 Now, you are the judge of the facts and I am the
16 judge of the law. I've just indicated one way that I come
17 into this trial. I make sure that the trial progresses
18 according to the rules of procedure and the rules of
19 evidence. We do have those sets of rules.

20 In that regard, regarding evidentiary issues, you
21 may hear at any given time Ms. Barr or Mr. Moseley or Mr.
22 Carraway stand up and make an objection. There are numerous
23 grounds for objections. That is their signal to me that
24 they have a dispute over a point of law. It might be an
25 objection to a question. It might be an objection to an

1 answer. It might be an objection to something else. It
2 might be an exhibit they object to. Do not think that if
3 someone makes an objection that they're trying to hide
4 something from you that you ought to see or hear. By the
5 same token, if a lawyer asks a question or something happens
6 and something is said don't think that that lawyer or person
7 is trying to slip something in that you ought not see or
8 hear.

9 The rules of evidence, my copy's in this brown
10 book over here (indicating), and the rules are about this
11 much. The rest of it is interpretation. I will interpret
12 the arguments made, I'll make rulings. Don't keep score
13 well, he ruled for them more times than the other side so he
14 must think they should win. That's not the way it works. I
15 may have to send you out of the courtroom to hear what they
16 have to say because one of my responsibilities is to make
17 sure that they have the right to state everything on the
18 record they want to say. And they may be a little unsure
19 about that, so I will, perhaps, sometime send you out of the
20 courtroom. And I will bring you back in and sometimes, I
21 may have to send you right back out. If you blame anybody,
22 blame me. Typically, I do that because I'm not quite sure
23 what they might want to tell me.

24 Now, the case itself will be conducted in stages.
25 In a moment, Ms. Barr for the State will stand up and make

1 an opening statement. That is her opportunity to tell you
2 what she believes the evidence will establish in this
3 particular case. After that, the Defendants will have the
4 right if they want to to make an opening statement. They
5 don't have to. And I'll tell you why in just a minute.
6 They can wait -- they can give an opening statement from the
7 -- at the beginning or they can wait until the State rest
8 and give an opening statement then. That will be entirely
9 up to them.

10 The State has charged Mr. Liner and Mr. Moseley
11 with four criminal offenses. As I mentioned to you, those
12 are murder, attempted armed robbery, possession of a weapon
13 during the commission of a violent crime and, also, criminal
14 conspiracy. The Defendants have pled not guilty to those
15 charges. They have no burden whatsoever. They do not have
16 to prove or disapprove anything. The State has the sole
17 burden of proof of proving the elements of the crimes
18 charged beyond a reasonable doubt. And proof beyond a
19 reasonable doubt is proof that leaves a jury firmly
20 convinced of guilt. I will instruct you more fully on the
21 definition of reasonable doubt at the end of the case.

22 As I mentioned to you at the beginning of the
23 case, Mr. Liner is not here. You are not to hold that
24 against him and you are not to hold that for him. The fact
25 that he is not here is of no consequence to your

1 determinations in this particular case.

2 Mr. Moseley, as I indicated, is representing
3 himself, which he has every right to do under our system of
4 justice. You're not to hold that for him and you're not to
5 hold that against him.

6 Ms. Butcher is standby counsel. And under our
7 rules, what that means is she is available to consult with
8 him at his request and to, perhaps, answer any questions or
9 receive any information from her that he request. Again,
10 don't hold that for him, don't hold that against him.

11 Now, ladies and gentlemen, we'll work until about
12 5:00 or 5:15 this afternoon and then you'll be free to go
13 about your business for the rest of the evening. But
14 remember, you cannot talk to anybody about this case. You
15 cannot do any computer research or any other research on any
16 of the issues, parties, lawyers or anything remotely
17 involving this case. And as I mentioned, I will tell until
18 you're tired of it that you cannot talk about this case
19 amongst each other until I tell you that you can.

20 Now, Mr. Barr, do you have objections to those
21 remarks?

22 MS. BARR: I do not, Your Honor.

23 THE COURT: Mr. Carraway?

24 MR. CARRAWAY: None, Your Honor.

25 THE COURT: Mr. Moseley?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: All right..

3 Ms. Barr.

4 MS. BARR: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Yes, ma'am.

7 MS. BARR: Mr. Moseley, Mr. Carraway.

8 Ladies and gentlemen of the jury, good afternoon.

9 My name is Kimberly Barr. I am, of course, a prosecutor
10 here in Williamsburg County. I also work in private
11 practice in the law offices of Ronnie Sabb. So today, I'm
12 going to have on my prosecutor's hat.

13 Before I begin my preliminary statements, I want
14 to take this opportunity to most sincerely thank you all for
15 your service this week. And when I say that I, of course,
16 recognize your service here wasn't voluntarily. Nobody just
17 kind of came out and said I'm not doing anything this week,
18 I'd love to just sit out in court and listen to a murder
19 trial. I understand you were required to be here. But I
20 want to thank you nonetheless for your willingness to serve.

21 You all may recall that when we went through the
22 jury selection process there were some people who were
23 selected and some people who were not selected for any
24 number of reasons. And I will tell you from my experience,
25 a lot of times I don't know jurors who come into court and

1 lawyers and parties are required to make a split-second
2 decision as to whether or not they want a particular person
3 on a jury. And so what I look for in every juror that comes
4 up is whether or not that juror can be fair, whether I
5 believe that juror will listen and whether I believe that
6 that juror will deliberate and render justice in the case.
7 And I am pleased to say that I think we got it right in
8 terms of our jurors here.

9 Now, why are you all here this week? Let me tell
10 you. This is a case that happened in March of 2001. It's a
11 murder case that happened many, many, many years ago. And
12 for a long period of time, the case was cold. We didn't
13 have new leads on it, law enforcement didn't have any viable
14 suspects and it took a while to get the case solved. And
15 what, essentially, happened is a young man was gunned down
16 and shot to death in his yard on Thorn Avenue. What the
17 evidence is going to show in this case is that four
18 individuals were involved in this young man's death.
19 Tontore York, everyone kind of calls him Tory, he was 22
20 years old at the time. And I'm just going to tell you this
21 and put it all out there because you're going to hear it.
22 The four individuals who the State will show you were
23 involved in this case is the Defendant, Arthur Moseley, the
24 Defendant Corey Liner, a fellow by the name of Lonnie Dozier
25 and a fellow by the name of Steve Durant. Mr. Durant is no

1 longer with us. He has since passed between the time he was
2 arrested for this offense and, obviously, the date of trial.

3 The evidence is going to show that Steve Durant
4 was the person who provided the weapon to Mr. Moseley. Mr.
5 Moseley, Mr. Liner, Mr. Dozier drove to the victim's house.
6 Mr. Moseley, I would submit to you, got out of the vehicle
7 and shot the victim multiple times, in the arm, in the chest
8 and in the abdomen. And as a result of the shooting, the
9 victim died about an hour or two later at the local
10 hospital.

11 The evidence is going to tell you that the motive
12 regarding this senseless shooting was because they were
13 attempting to rob the victim by the gun for either money or
14 drugs or whatever it was that they thought that he had that
15 they wanted. And folks, that's the story. You're going to
16 hear from a couple of different witnesses in the case. We
17 don't expect that the case will last very long. I tend to
18 like to try cases and get to the meat of things and --
19 because I recognize that you all have made sacrifices to be
20 here. So I'm not going to be very long in terms of my
21 presentation, but I, certainly, don't want that to take away
22 from the importance of this particular case.

23 Tory York's family is here. They've waited a long
24 day to get justice. Obviously, Mr. Moseley, who we believe
25 is the trigger man, has waited a long time to get justice.

1 We hope and we expect that at the end of this case, once
2 you've heard all of the evidence, once you've heard the law
3 that the Judge is going to give you that you will render
4 justice. And I'll get an opportunity to come back before
5 you all before this trial is concluded. And that part of
6 the trial is called closing argument. And at that time, I'm
7 going to ask that you render a verdict of justice in this
8 case. And I'll submit to you at that time that justice
9 would be rendered by the return of a guilty verdict.

10 Thank you all for your time. Thank you in advance
11 for your attention.

12 THE COURT: Thank you, Ms. Barr.

13 Mr. Carraway?

14 MR. CARRAWAY: I'd like to waive opening.

15 THE COURT: Mr. Moseley, any opening statement?

16 THE DEFENDANT: Yes, Your Honor.

17 I just have a short paragraph, but the evidence
18 will show that this case has no forensic evidence against
19 me, the Defendant. There's no gun, no rounds, no shells, no
20 DNA, no video. You will hear testimony from witnesses
21 bringing a motion for a subpoena as well. Ms. Kimberly Barr
22 attested of other people did the crime. I am only here due
23 to hearsay from my former high school friends. Lonnie
24 Dozier, his proffer deal is seven years and three months
25 time. Cory Liner, he's a convicted pedophile -- of the law.

1 I, myself, was in a psych ward. The documentations, I
2 cannot produce. My former attorney, she hasn't attempted to
3 get it. My PI hasn't attempted to get them. So they just
4 place me in this for nothing. I'm innocent. I've been
5 trying to get to the issue of this. Steve Durant, may he
6 rest in peace, he would testify there was no gun --

7 MS. BARR: Objection.

8 THE COURT: Don't talk about what Mr. Durant may
9 have said.

10 THE DEFENDANT: Oh, I'm sorry.

11 THE COURT: That's all right. Objection
12 sustained.

13 THE DEFENDANT: That's basically it. There's no
14 evidence linking me, only testimony of proffered deals and
15 stuff. I did not do this crime and I pray everyday for the
16 victim's family. Thank you.

17 THE COURT: Thank you, Mr. Moseley.

18 All right. Mrs. Barr, are you prepared to present
19 your first witness?

20 MS. BARR: We are, Your Honor. We call Lonnie
21 Lamont Dozier at this time.

22 THE COURT: Okay.

23 Ladies and gentlemen, while the witness is coming
24 in, you may see me taking notes. I'm not writing down
25 anything because I think something is particularly

LONNIE DOZIER DIRECT BY MS. BARR

1 important. Typically, I write down the times things are
2 happening, just in case you're curious about that.

3 All right. Where's Mr. Dozier?

4 BAILIFF: He's coming.

5 THE COURT: Okay.

6 THE CLERK: Please your left hand on the Bible and
7 raise your right hand.

8 THEREUPON,

9 LONNIE LAMONT DOZIER,

10 after having been duly sworn, testified as follows:

11 THE CLERK: Okay. Have a seat.

12 THE COURT: State your full name for the record.

13 THE WITNESS: Lonnie Lamont Dozier.

14 THE COURT: D-O-Z-I-E-R?

15 THE WITNESS: Yes, sir.

16 THE COURT: Ms. Barr.

17 MS. BARR: Thank you.

18 DIRECT EXAMINATION

19 BY MS. BARR::

20 Q. Mr. Dozier, I need to make sure that when you speak
21 that you speak up nice and clear for me so that the
22 court reporter can take down what you're saying and so
23 that I can hear you, okay?

24 A. Yes, ma'am.

25 Q. Okay. How old are you?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. Thirty-six.
- 2 Q. Thirty-six years old?
- 3 A. Yes.
- 4 Q. And, obviously, we see that you have on an orange
- 5 jumpsuit. Tell us why it is that you have on an orange
- 6 jumpsuit?
- 7 A. Because I committed an armed robbery back in '02.
- 8 Q. I can't hear you. Say it again.
- 9 A. I committed an armed robbery back in '02.
- 10 Q. You're currently incarcerated?
- 11 A. Yes, ma'am.
- 12 Q. Where are you incarcerated?
- 13 A. Out at Williamsburg Center.
- 14 Q. Okay. You're incarcerated in the federal prison?
- 15 A. Federal.
- 16 Q. And you've been there since 2002?
- 17 A. Yes, ma'am.
- 18 Q. And when are you scheduled to be released?
- 19 A. 2019.
- 20 Q. 2019?
- 21 A. Right.
- 22 Q. So that means, if my math is right, you would have
- 23 served about 17 years?
- 24 A. Right.
- 25 Q. Okay. All right. Now, prior to your incarceration,

LONNIE DOZIER DIRECT BY MS. BARR

- 1 did you know a fellow by the name of Arthur Moseley?
- 2 A. Yes.
- 3 Q. All right. Is he the gentleman seated here with the
- 4 orange shirt on?
- 5 A. Yes, ma'am.
- 6 Q. And prior to your incarceration, did you know a fellow
- 7 by the name of Corey Liner?
- 8 A. Yes.
- 9 Q. How is it that you know Mr. Liner?
- 10 A. I know him from the streets for several years.
- 11 Q. Okay. Is he related to you, are you all friends?
- 12 A. We were friends.
- 13 Q. Okay. All right. What about a fellow by the name of
- 14 Steve Durant?
- 15 A. Yes, we was also friends.
- 16 Q. Okay. All right. Now, Steve Durant is no longer
- 17 living?
- 18 A. No, ma'am.
- 19 Q. Do you know when he passed?
- 20 A. I can't exactly tell you what the year was, but I know
- 21 he's dead.
- 22 Q. Okay. All right. How long have you known Mr. Moseley?
- 23 A. For several years.
- 24 Q. Okay. What's several years, give me some idea?
- 25 A. Like high school.

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. Okay. All right. Is he about your age?
- 2 A. Yes.
- 3 Q. You all went to high school together?
- 4 A. Yes.
- 5 Q. Okay. All right. What about Tory York, did you know
- 6 him?
- 7 A. Yes.
- 8 Q. How long had you known him?
- 9 A. Same thing.
- 10 Q. About the same time?
- 11 A. Yes.
- 12 Q. Did you go to school with him as well?
- 13 A. No.
- 14 Q. Okay. All right. I'm going to take you back to the
- 15 afternoon of March the 23rd of 2011. You remember that
- 16 day, don't you?
- 17 A. Yes.
- 18 Q. Okay. All right. And, of course, you know that that
- 19 is the date that Mr. York was killed, correct?
- 20 A. Yes.
- 21 Q. Okay. All right. On that particular day, earlier in
- 22 the day, were you in the company of Mr. Arthur Moseley?
- 23 A. No, not during that day, no.
- 24 Q. Okay. All right. Tell us when it was the first time
- 25 that you saw Mr. Moseley that day?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. When him and Corey Liner approached me in my family's
2 yard.
- 3 Q. Okay. Where were you living at the time?
- 4 A. With my mother.
- 5 Q. Okay. All right. Where was your mother living? I
6 need you to speak up.
- 7 A. On 261.
- 8 Q. She was living on Highway 261?
- 9 A. Yes.
- 10 Q. Okay. Prior to March 23rd of 2001, had Corey Liner and
11 Arthur Moseley ever come to your home?
- 12 A. No.
- 13 Q. Had you ever been to either one of their homes?
- 14 A. Yes.
- 15 Q. Did you all socialize together?
- 16 A. Well, me and Corey, we did most the socializing
17 together.
- 18 Q. Okay.
- 19 A. Right.
- 20 Q. You had a closer friendship with Corey than with Mr.
21 Moseley?
- 22 A. Yes.
- 23 Q. Okay. All right. You indicated that Mr. Liner and Mr.
24 Moseley came to your house or your mother's house?
- 25 A. Yes, ma'am.

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. How was it that they got there?
- 2 A. They drove.
- 3 Q. Do you remember the type of vehicle they were driving?
- 4 A. Like a Pontiac.
- 5 Q. Okay. Who was driving the vehicle?
- 6 A. Corey Liner.
- 7 Q. Okay. And do you know who the vehicle belonged to?
- 8 A. Arthur Moseley's girlfriend, baby mother.
- 9 Q. It belonged to the woman --
- 10 A. Yes, his baby mother.
- 11 Q. His baby's mother. Okay. Do you know where she was
- 12 from?
- 13 A. She was staying in Florence.
- 14 Q. Now, how do you know all of this about who the car
- 15 belonged to and where his girlfriend lived? How did
- 16 you know that information?
- 17 A. Because he said it.
- 18 Q. Okay. When you say he said it --
- 19 A. Arthur Moseley.
- 20 Q. Arthur Moseley said it. Okay. Do you remember about
- 21 what time it was that they came to your home?
- 22 A. It was kind of early, around about -- if I'm not
- 23 mistaken, it was around about eight.
- 24 Q. Okay. All right. And what was the reason why they
- 25 came to your home?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. They just pulled up behind me and I was just getting in
2 and they was like ride with us.
- 3 Q. Okay. Did you agree to do that?
- 4 A. Yes, I got in the car.
- 5 Q. All right. Where did get in the car?
- 6 A. At my mother house.
- 7 Q. Okay. But, I mean -- I'm sorry, what part of the car
8 did you get in?
- 9 A. The back seat.
- 10 Q. Okay. Were you behind --
- 11 A. Behind the driver.
- 12 Q. Behind the driver?
- 13 A. Yes.
- 14 Q. And where did you go once -- where did the three of you
15 go once you left your house?
- 16 A. Right. We went to Steve Durant's house.
- 17 Q. Now, where did Steve Durant live?
- 18 A. On Thorn Avenue.
- 19 Q. Okay. Do you know where Arthur Moseley was living at
20 the time?
- 21 A. Yes.
- 22 Q. Okay. Where was he living?
- 23 A. In White Oak.
- 24 Q. Okay. And what about Corey Liner, do you know where he
25 was living at the time?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. He was staying with Ms. Beck.
- 2 Q. With who?
- 3 A. Ms. Beck.
- 4 Q. Ms --
- 5 A. Rebecca Fulton.
- 6 Q. Rebecca Fulton?
- 7 A. Yes.
- 8 Q. Okay. All right. And do you know who Ms. Beck was to
- 9 him, was that a girlfriend, a relative or --
- 10 A. No, ma'am, just -- she was like a mother-like type of
- 11 woman. She like took him in.
- 12 Q. Okay. Now, you indicated that the Defendant, Arthur
- 13 Moseley, was living in the White Oak community of
- 14 Williamsburg County?
- 15 A. Uh-huh.
- 16 Q. Is that a yes?
- 17 A. Yes.
- 18 Q. Okay. And do you know if he was living with anybody?
- 19 A. Well, he was staying back and forth from his girlfriend
- 20 house to his mother house in White Oak.
- 21 Q. Okay. Do you know who his mother is?
- 22 A. No, ma'am, I don't know. But I know her name was Glow,
- 23 that's all.
- 24 Q. Say again.
- 25 A. Her name was Ms. Glow, but I don't know her like that.

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. They called her Ms. Glow?
- 2 A. Right.
- 3 Q. Okay. All right. You indicated that you all then went
4 to Steve Durant's house; is that right?
- 5 A. Yes, ma'am.
- 6 Q. What happened when you got to Steve Durant's house?
- 7 A. We got in there and we went right into his room. And
8 he was telling us about a situation about what happened
9 between Don Burgess and Tory York robbing this guy by
10 the name of -- they call him Little D.
- 11 Q. Okay. All right. Now, when you say he was talking
12 about a situation between Tory York, Little D and Don
13 Burgess, who are you talking about was making those
14 statements?
- 15 A. Steve Durant.
- 16 Q. Steve Durant was saying that?
- 17 A. Right.
- 18 Q. Were you in the room when he said that?
- 19 A. Yes, I was in there.
- 20 Q. Was Arthur Moseley in the room when he said that?
- 21 A. All of us.
- 22 Q. Including Mr. Liner?
- 23 A. Right.
- 24 Q. Okay. After he made the statements, then what
25 happened?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. Okay. Well, we talked for a few more moments and
2 that's when he gave the gun to Corey and --
- 3 Q. Who gave the gun to Corey?
- 4 A. Steve.
- 5 Q. Steve gave a gun to Corey, Corey Liner?
- 6 A. Yes.
- 7 Q. What type of gun was it?
- 8 A. A .38.
- 9 Q. Okay. Now, would you recognize a .38 caliber pistol if
10 you saw it?
- 11 A. Yes.
- 12 Q. Okay. All right. Steve Durant then gives the gun to
13 Corey Liner?
- 14 A. (The witness nodded head.)
- 15 Q. Is that right?
- 16 A. Yes.
- 17 Q. Okay. All right. And for what reason, if you know,
18 did Mr. Durant give the gun to Corey Liner?
- 19 A. Well, I guess to rob him.
- 20 Q. To rob who?
- 21 A. Tory York.
- 22 Q. Okay. You have to kind of be specific. Why is it that
23 you guess that he gave the gun to Corey Liner to rob
24 Tory York?
- 25 A. Because --

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. What was said or done that made you come to that
2 belief?
- 3 A. Because they was talking about the drugs that they
4 robbed Little D for, you know.
- 5 Q. Okay.
- 6 A. At the time.
- 7 Q. Okay.
- 8 A. So he was -- they was discussing it, you know. Corey
9 said -- he ask did he have a gun.
- 10 Q. Corey asked?
- 11 A. Steve did he have --
- 12 Q. Steve Durant if he had a gun?
- 13 A. Right.
- 14 Q. What did Steve say?
- 15 A. He was like yeah.
- 16 Q. Did you see -- actually, see Steve Durant give Corey
17 Liner the gun?
- 18 A. Yes.
- 19 Q. Then what happened?
- 20 A. He gave it to him and, like I said, we just sat around
21 for a minute just discussing little things going on.
22 And we left, got in the car.
- 23 Q. Okay. When you left and got in the car, after you --
24 as you all were leaving Steve Durant's house, who was
25 where inside the vehicle?

LONNIE DOZIER DIRECT BY MS. BARR

1 A. Well, Corey was in the driver's seat. Arthur was on
2 the passenger side and I was in the back behind Corey.

3 Q. Okay. And then where was the intended destination
4 after you left Steve's house?

5 A. We went directly to Tory York's house.

6 Q. Now, where was Tory living at the time?

7 A. Right there on Thorn Avenue.

8 Q. So if Steve Durant was living on Thorn Avenue and the
9 victim -- and Mr. York was living on Thorn Avenue, how
10 far apart were they?

11 A. Like I'm going to say between four minutes -- four to
12 five minutes at the most.

13 Q. All right.

14 A. Walking distance.

15 Q. Walking distance. Okay. Okay. Fair enough. Fair
16 enough. Tell me what happened when you all got to Tory
17 York's house?

18 A. Well, he was sitting on the porch. When we pulled up,
19 he had a flashlight in his hand and he was flashing the
20 light on the car.

21 Q. Who was doing that?

22 A. Tory.

23 Q. Now, at this time, was it light outside or was it dark
24 outside?

25 A. It was dark.

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. It was dark. Okay. Was anyone else on the porch with
2 him other than --
- 3 A. Well, someone was on the porch, but he was leaving at
4 the time.
- 5 Q. Okay.
- 6 A. As we was pulling in.
- 7 Q. All right. And tell us what happened as he -- Tory was
8 holding the flashlight.
- 9 A. Okay, he was like -- he was flashing the light. He was
10 like, Who is that? Who is that? That's when Corey
11 Liner wind the window down, he was like, It's Corey.
12 And he flashed the light on me when I was in the back
13 seat. He was like, What's up, man? I was like, What's
14 up? He was like, I see you got golds in your mouth,
15 because I just came back from Florida like the week
16 before.
- 17 Q. Let me ask you this. We see now that you have gold
18 teeth in your mouth. You had the gold teeth back then?
- 19 A. Yes, ma'am.
- 20 Q. Did you have your hair braided or corn rows or anything
21 back then?
- 22 A. No, I just had it low.
- 23 Q. Say again.
- 24 A. I had it low.
- 25 Q. Okay. All right. What about Mr. Moseley, did he have

LONNIE DOZIER DIRECT BY MS. BARR

- 1 corn rows or braids or gold teeth at that time?
- 2 A. No, he was rocking like, almost like a mini afro.
- 3 Q. What about Corey Liner?
- 4 A. He had twists in his hair.
- 5 Q. He had twists in his hair?
- 6 A. Right.
- 7 Q. And what about gold teeth?
- 8 A. He had gold teeth, also.
- 9 Q. Okay. All right. Tell me what happened after the
- 10 victim approached the car and observes that you've got
- 11 gold in your mouth, what happens from that point?
- 12 A. Okay. Well, Corey starts talking to him about the
- 13 situation with Little D and --
- 14 Q. Now, now, hold on for just a second. You referred to a
- 15 person you all called Little D?
- 16 A. Right.
- 17 Q. Okay.
- 18 A. David.
- 19 Q. His name is David?
- 20 A. Right, David Brockington.
- 21 Q. David Brockington?
- 22 A. Right.
- 23 Q. All right. Now, do you know where David Brockington is
- 24 or what happened to him?
- 25 A. From what I heard --

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Q. Don't tell me what you heard. Don't tell me what you
2 heard. Is he still living?
- 3 A. No, ma'am.
- 4 Q. He's not living anymore?
- 5 A. No.
- 6 Q. Okay. All right. Now, please continue in terms of the
7 conversation between Mr. Liner and the victim, Tory
8 York?
- 9 A. Well, Corey was like well, we heard -- he heard what
10 happened with the situation with them, you know. And
11 Tory was like, no, it was a little something, little
12 something like that, so he was like -- so after they
13 talked about that, Corey was like, You try to buy a
14 gun.
- 15 Q. Okay.
- 16 A. So Tory was like let me see it. So he showed him the
17 gun.
- 18 Q. Who showed him the gun?
- 19 A. Corey showed Tory the gun.
- 20 Q. Corey showed --
- 21 A. Corey was on the driver's side and Tory was leaning in
22 the window like this (indicating) on the door.
- 23 Q. Okay.
- 24 A. And he showed him the gun.
- 25 Q. All right. Let me make sure I get what you're saying

LONNIE DOZIER DIRECT BY MS. BARR

1 here. We'll just pretend for now that you are Corey,
2 okay?

3 A. Yes.

4 Q. You described how was he leaning on the window?

5 A. Like this (indicating).

6 Q. Did he ever get out of the vehicle?

7 A. No, ma'am.

8 THE COURT: You said he, clarify, please.

9 MS. BARR: I'm sorry.

10 BY MS. BARR::

11 Q. When you said he was leaning on the window of the car,
12 who were you talking about?

13 A. Tory.

14 Q. Tory was?

15 A. Yes.

16 Q. Okay. And he was talking with?

17 A. Corey.

18 Q. Corey?

19 A. Yes.

20 Q. Okay. And I'm sorry, please continue.

21 A. Okay. And Tory was like, No, not right now -- that's
22 his exact words.

23 Q. Did you see Corey Liner show the victim a gun?

24 A. Yes.

25 Q. Was it the same gun that Corey had gotten from Steve

LONNIE DOZIER DIRECT BY MS. BARR

- 1 Durant?
- 2 A. Yes, ma'am.
- 3 Q. Okay. All right. After the victim says no, then what
- 4 happens?
- 5 A. Corey sat the gun on the armrest right here between the
- 6 seats (indicating).
- 7 Q. Okay.
- 8 A. And like a few seconds later, that's when the passenger
- 9 door opened to the passenger side.
- 10 Q. Okay.
- 11 A. And Arthur got out of the car.
- 12 Q. All right.
- 13 A. And walked around to the front of the car.
- 14 Q. Okay.
- 15 A. And point the gun at Tory and Tory started backing up.
- 16 He throwed his hand up like this (indicating) trying to
- 17 shield himself.
- 18 Q. Okay.
- 19 A. He was like, Hold on, hold on, you don't have to do it
- 20 like this.
- 21 Q. Who said that?
- 22 A. Tory York.
- 23 Q. Tory was backing up saying what now?
- 24 A. Right, you don't have to do it like this.
- 25 Q. That you don't have to do it like this?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. Right.
- 2 Q. Okay. Then what happened?
- 3 A. Arthur just started shooting.
- 4 Q. Okay. All right. And what did the victim do as Arthur
- 5 was shooting?
- 6 A. Like I say, he just threw his hands up and Arthur had
- 7 the gun pointed at him (indicating). He was like, Hold
- 8 on, hold on, you don't have to do it like this. He
- 9 just started shooting several times.
- 10 Q. Was he saying anything as he was shooting?
- 11 A. No, ma'am.
- 12 Q. Did you expect that that was going to happen?
- 13 A. No, ma'am, not like that.
- 14 Q. What do you mean when you say not like that?
- 15 A. I didn't know he was going shoot him. You know, I
- 16 ain't -- it just threw me off because it happened so
- 17 fast, you know.
- 18 Q. Okay.
- 19 A. And that's when we started screaming at Arthur. You
- 20 know, we was like, Get in the car, get in the car, you
- 21 know.
- 22 Q. All right. What did the victim do?
- 23 A. He ran. From what I heard later, he --
- 24 Q. Don't tell me what you heard later. Tell me what you
- 25 saw that day.

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. Well, he ran.
- 2 Q. Okay.
- 3 A. You know, after he got shot, he ran. And we told
- 4 Arthur, Get in the car, get in the car. He got in the
- 5 car and we backed out and we left.
- 6 Q. How many times did Arthur shoot Tory?
- 7 A. I'm going to estimate like three. It was three or four
- 8 shots fired.
- 9 Q. Okay. Did Arthur Moseley shoot Tory with the same gun
- 10 that Steve Durant gave to Corey?
- 11 A. Yes, ma'am.
- 12 Q. What happened after Mr. Moseley got back into the
- 13 vehicle?
- 14 A. Okay. Once he got in the vehicle, I was like saying,
- 15 Why you did that? Why you did that, you know? And he
- 16 was quiet, you know, looking -- he had a mug-like face.
- 17 Q. He had a what on his face?
- 18 A. A mug, like looking angry (indicating).
- 19 Q. Okay.
- 20 A. And that's when we went to Steve's house around the
- 21 corner.
- 22 Q. Y'all went back to Steve Durant's house?
- 23 A. Yeah, we told him what happened.
- 24 Q. Okay. What happened after y'all told him what
- 25 happened?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. We gave the gun back to him -- or Corey gave the gun
2 back to him. And he was like, We got to get rid of the
3 gun.
- 4 Q. Okay.
- 5 A. And --
- 6 Q. Now, let me ask you this, how it is that Corey got
7 ahold of the gun after the shooting if Arthur Moseley
8 did the shooting?
- 9 A. Because he -- he put the gun down once he got back in
10 the car.
- 11 Q. You say he put the gun down?
- 12 A. Arthur.
- 13 Q. Okay.
- 14 A. Right.
- 15 Q. Okay.
- 16 A. And Corey got the gun.
- 17 Q. And gave it back to Steve Durant?
- 18 A. Once we got to Steve's house.
- 19 Q. And you mentioned that somebody said we've got to get
20 rid of it?
- 21 A. Right.
- 22 Q. Who said that?
- 23 A. Steve did.
- 24 Q. Did you at any point during this whole transaction, did
25 you ever have possession of the gun?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. No, ma'am.
- 2 Q. When you all arrived back to Mr. Durant's house, how
3 long did you stay there?
- 4 A. We stayed there probably like at the most three
5 minutes.
- 6 Q. Okay. When you left, was the gun in Mr. Durant's
7 possession?
- 8 A. Yes, ma'am.
- 9 Q. How did you all leave Mr. Durant's house?
- 10 A. We left in two separate cars.
- 11 Q. Okay. Who was in which car?
- 12 A. Well, me, Arthur and Corey Liner was in Arthur
13 Moseley's girlfriend car.
- 14 Q. Okay.
- 15 A. And Steve Durant was in his own car with him and
16 another female.
- 17 Q. Where did you go?
- 18 A. Well, he told us to follow him and we was on our way to
19 this club by the name of Ponytail back then.
- 20 Q. What was the name of the place?
- 21 A. Ponytail.
- 22 Q. It was a nightclub?
- 23 A. Yes.
- 24 Q. Okay. All right. Did you all end up going to the
25 nightclub?

LONNIE DOZIER DIRECT BY MS. BARR

- 1 A. No, ma'am.
- 2 Q. What happened?
- 3 A. Well, he was speeding and he was like turning curbs and
4 stuff, you know --
- 5 Q. Who was?
- 6 A. -- so we kinda lost him. Steve Durant.
- 7 Q. Okay.
- 8 A. That's when we stopped and went back. We turned around
9 and we came back.
- 10 Q. Came back where?
- 11 A. We went to the Track Stop.
- 12 Q. You went to the Track Stop?
- 13 A. Right, that's on Thorn Avenue.
- 14 Q. Okay. Why did y'all end up going there?
- 15 A. Because we really didn't -- we really didn't know what
16 to do at the time, you know, because we were all really
17 frustrated, you know.
- 18 Q. Okay.
- 19 A. But I told them to take me home, you know, but we ended
20 up at Track Stop, you know, just sitting in the parking
21 lot.
- 22 Q. Did you all go back or near the victim's home?
- 23 A. No. No, ma'am.
- 24 Q. How did you find out that Mr. York -- that it became
25 public knowledge that Mr. York had been killed? How

LONNIE DOZIER DIRECT BY MS. BARR

1 did you find that out?

2 A. This guy by the name of -- I know we call him Zack, but

3 I can't call his real name. I don't know his real

4 name.

5 Q. Okay.

6 A. He walked up to the car and he was like, Y'all heard

7 about Tory? So we was like, No. And he was like, Tory

8 dead.

9 Q. Okay. All right. Now, when Zack came up and asked

10 y'all that question, did you respond to him?

11 A. No, ma'am.

12 Q. All right. Now, you remember when Tory York was

13 buried?

14 A. Yes, ma'am.

15 Q. You remember his funeral services?

16 A. Yes, ma'am I went.

17 Q. You went to his funeral services?

18 A. Yes, ma'am.

19 Q. Did Mr. Liner go to his funeral services?

20 A. Matter of fact, we rode together, me, him and this lady

21 by the name of Maxine. She's just passed, also.

22 Q. Okay. Was Mr. Moseley there?

23 A. No, ma'am.

24 Q. All right. Now, immediately after the shooting, of

25 course, Mr. Dozier, you did not come forward and tell

LONNIE DOZIER DIRECT BY MS. BARR

1 this information to the police?

2 A. No, ma'am.

3 Q. Okay. Tell us when it was that you first had a
4 conversation with a law enforcement official about your
5 knowledge of what happened to Tory York?

6 A. When I got arrested, but I waited until like 2003.

7 Q. Okay. Why did you wait until 2003?

8 A. Because I was really afraid that my name was going to
9 be called into it and because I have heard someone
10 mention it before when I was on the streets.

11 Q. Okay. All right. While you were out in the streets
12 before you were and arrested, did you and Mr. Moseley
13 ever have a conversation about whether or not you had
14 talked to the police or anybody else had talked to the
15 police?

16 A. Right.

17 Q. That happened?

18 A. Right.

19 Q. All right. Tell us about that conversation.

20 A. Well, we was together one day and he was like, You
21 didn't say nothing -- you didn't tell nobody about the
22 situation, about the murder situation? And I was like,
23 No. I said, Who do you think I am?

24 Q. Okay. Who was the person that you spoke with in law
25 enforcement when you finally did tell what happened?

LONNIE DOZIER DIRECT BY MS. BARR

1 A. Mr. Vincent Flamini, a federal agent.

2 Q. A federal agent by the name of Vince Flamini?

3 A. Yes, ma'am.

4 Q. Okay. Now, did you tell him the same information that
5 you just told the jury?

6 A. Yes, ma'am.

7 Q. Okay. Were you rewarded in any way in terms of your
8 sentence as it relates to giving information about the
9 murder of Tory York?

10 A. No, ma'am.

11 MS. BARR: Beg the Court's indulgence.

12 (Pause.)

13 BY MS. BARR::

14 Q. In terms of your conversations with Agent Flamini, you
15 said that occurred, I believe, in 2003?

16 A. Yes.

17 Q. Okay. All right. Were you given immunity for your
18 statement to Agent Flamini at that time?

19 A. Excuse me?

20 Q. Were you given immunity for your statements? In other
21 words, did Agent Flamini tell you that anything that --
22 any information that you provided for this unsolved
23 murder couldn't be used against you?

24 A. Yes, he told me that.

25 Q. Okay. And in terms of the information that you gave to

LONNIE DOZIER CROSS BY MR. CARRAWAY

1 him, who did you name as being the individuals involved
2 in the shooting of Tory York?

3 A. Arthur Moseley.

4 Q. Did you also mention Mr. Liner?

5 A. Yes.

6 Q. Did you also mention --

7 A. And myself.

8 Q. And yourself?

9 A. Yes.

10 Q. You told him about --

11 A. Yes, I told him we was all there.

12 Q. Okay. Did you also mention Mr. Durant to Agent
13 Flamini?

14 A. Yes.

15 Q. Sir, have you understood all of my questions?

16 A. Yes, ma'am.

17 Q. Have you answered them truthfully?

18 A. Yes, ma'am.

19 Q. If you will, please, answer any questions that
20 Mr. Moseley or Ms. Carraway may have for you.

21 THE COURT: Mr. Carraway?

22 CROSS-EXAMINATION

23 BY MR. CARRAWAY::

24 Q. You and Corey Liner are good friends, aren't you?

25 A. Yes, sir.

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 Q. Y'all have been friends over the years. And y'all are
2 friends with the York family, too, are you not?
- 3 A. Yes.
- 4 Q. You always have been?
- 5 A. Yes, sir.
- 6 Q. Is that not right?
- 7 A. Yes.
- 8 Q. And you've remained friendly with them, have you not?
- 9 A. Yes.
- 10 Q. And you know Carlos?
- 11 A. Yes.
- 12 Q. Carlos is his brother.
- 13 A. Yes.
- 14 Q. I know Carlos well. And you testified that when y'all
15 got to Steve Durant's house, there was talk about Tory
16 York -- y'all talked about that people was saying that
17 Tory York had robbed David Brockington of some drugs?
- 18 A. Yes.
- 19 Q. Isn't that right?
- 20 A. Yes.
- 21 Q. And that they'd taken a safe or something where he kept
22 his drugs?
- 23 A. Yes.
- 24 Q. And he kept the safe near his house, is that not right?
- 25 A. Right.

LONNIE DOZIER CROSS BY MR. CARRAWAY

1 THE DEFENDANT: Objection, you're leading the
2 defendant [sic], sir.

3 THE COURT: He can lead. It's cross-examination.

4 THE DEFENDANT: He can?

5 THE COURT: Yes, sir, he can lead on cross.

6 THE DEFENDANT: Okay.

7 BY MR. CARRAWAY::

8 Q. And that's what they talked about, that they had taken
9 the safe -- that Tory York and maybe another girl was
10 along with him and somebody else, they had taken the
11 safe and busted the safe open and got some drugs,
12 right?

13 A. Right.

14 Q. So that's what they talked about. And you testified
15 when Ms. Barr talked to you that you just assumed that
16 they had talked about a robbery or whatever, but you
17 didn't hear anybody say anything about going to rob
18 Tory York, did you? I mean, you testified to her that
19 you just assumed that, is that right?

20 A. I assumed they was talking about it.

21 Q. They were talking about Tory had robbed David, isn't
22 that right?

23 A. Right. Right.

24 Q. Okay. You didn't hear them say anything about robbing
25 Tory, did you? You just assumed, that was what you

LONNIE DOZIER CROSS BY MR. CARRAWAY

1 said, right?

2 A. No.

3 Q. Huh?

4 A. I didn't assume.

5 Q. Okay. All right. Let me ask you this, do you recall
6 Corey saying anything about Tory wanting a gun because
7 that -- that he feared that he might need one because
8 David Brockington --

9 MS. BARR: Objection to as the hearsay, Your
10 Honor.

11 THE COURT: Just a second.

12 The question again, Mr. Carraway, I didn't hear
13 all of it.

14 Don't answer yet.

15 BY MR. CARRAWAY::

16 Q. Do you recall Corey saying anything about that Tory
17 might need a gun because of the problems that he was
18 having with what people were saying about David
19 Brockington?

20 THE COURT: Okay. Your objection?

21 MS. BARR: Hearsay.

22 THE COURT: Overruled.

23 THE WITNESS: No, sir.

24 BY MR. CARRAWAY::

25 Q. Okay. But when you went over to the house -- when

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 y'all rode over there, Corey did say ask Tory do you
2 want to buy a gun?
- 3 A. Yes.
- 4 Q. Didn't he say that?
- 5 A. Correct.
- 6 Q. Okay. And you said Tory said not right now or what did
7 he say?
- 8 A. He said, Not right now, come holler at me later.
- 9 Q. Come holler at me later?
- 10 A. Yes.
- 11 Q. Okay. And then you said Corey put the gun down on the
12 console between --
- 13 A. Right.
- 14 Q. Right there (indicating.
- 15 A. Right.
- 16 Q. Right there (indicating)?
- 17 A. Right.
- 18 Q. And y'all were sitting there or whatever and then you
19 said Arthur grabbed the gun?
- 20 A. Yes, sir.
- 21 Q. And got out of the car?
- 22 A. Got out of the car.
- 23 Q. Okay. Were you surprised by that?
- 24 A. I was shocked.
- 25 Q. Okay. And did it appear that Corey was also shocked

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 like you?
- 2 A. Yes, sir.
- 3 Q. Okay. All right. And what then happened?
- 4 A. That's when he got out the car. He had -- he got the
- 5 gun out the car, walked in front of the car and Tory
- 6 was still on the passenger side -- I mean, on the
- 7 driver's side. And he walked all the way around the
- 8 car and point the gun at Tory and that's when Tory
- 9 started backing up, shielding his face like this
- 10 (indicating).
- 11 Q. Okay. So Corey didn't give Arthur the gun?
- 12 A. No --
- 13 Q. He sat it down?
- 14 A. Right.
- 15 Q. He had asked him if he wanted to buy the gun and he sat
- 16 it down there?
- 17 A. Right. After Tory said, Come holler at me later.
- 18 Q. You and Corey had both spent time that the York
- 19 residence, hadn't you?
- 20 A. Yeah, we did.
- 21 Q. Y'all knew them -- I mean, over the years, y'all knew
- 22 them well enough to go to that house?
- 23 A. No, we never been to the house, not me.
- 24 Q. I'm talking about Tory's house?
- 25 A. No.

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 Q. Okay.
- 2 A. No, no, no.
- 3 Q. But y'all knew the family?
- 4 A. Yes.
- 5 Q. Knew all of them?
- 6 A. Yes.
- 7 Q. Did you know the momma and daddy?
- 8 A. No.
- 9 Q. Did you know his momma?
- 10 A. No.
- 11 Q. But you knew his brothers and sisters, right?
- 12 A. Right. Right.
- 13 Q. You knew all of them. Okay. And did you go to school
- 14 with them?
- 15 A. No, I'm a little older than Tory.
- 16 Q. You're a little bit older?
- 17 A. Right.
- 18 Q. And are you and Corey the same age or is Corey younger
- 19 than you?
- 20 A. We the same.
- 21 Q. Y'all the same age?
- 22 A. Right.
- 23 Q. Okay. And y'all went to school together and have known
- 24 each other, right?
- 25 A. Right.

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 Q. And you said you were shocked and it appeared that
- 2 Corey was shocked?
- 3 A. Right.
- 4 Q. By what Arthur did when he grabbed that gun, right?
- 5 A. Yes, sir.
- 6 Q. Okay. And you said when Arthur got back in the car, he
- 7 put the gun back down on the console again, right?
- 8 A. Right.
- 9 Q. Is that right?
- 10 A. (The witness nodded head.)
- 11 Q. Were you glad that Corey got the gun back?
- 12 A. Right.
- 13 Q. At that point?
- 14 A. Right.
- 15 Q. Were you glad?
- 16 A. Yes, sir.
- 17 Q. Okay. All right. What was -- what was Arthur's
- 18 demeanor when he came back to the car?
- 19 A. Well, he just sat there. He was looking mean, mad,
- 20 whatever, you know, with mug on his face.
- 21 Q. Did you feel safer when Corey got the gun back off the
- 22 console?
- 23 A. In a way.
- 24 Q. Okay. And did you get -- were you angry and did you
- 25 express your anger to Arthur about what he had done?

LONNIE DOZIER CROSS BY MR. CARRAWAY

- 1 A. Right.
- 2 Q. Did Corey, also?
- 3 A. Yes.
- 4 Q. All right. And what did you say and what did Corey say
- 5 to Arthur?
- 6 A. Well, I was just like, Why the F you did that, you
- 7 know.
- 8 Q. What did Corey say?
- 9 A. He basically said the same thing.
- 10 Q. Okay. And you're -- would it be safe to say -- all
- 11 right. Now, y'all drive around that night?
- 12 A. (The witness nodded head.)
- 13 Q. Then eventually, y'all dropped Arthur off, right?
- 14 A. No, they dropped me off.
- 15 Q. They dropped you off?
- 16 A. Right.
- 17 Q. Okay. They dropped you off at your house?
- 18 A. Right.
- 19 Q. Because this was Arthur's girlfriend's car, right?
- 20 A. Yes, sir.
- 21 Q. Okay.
- 22 THE DEFENSE: I don't have any further questions.
- 23 Thank you. Answer anything that Mr. Moseley may have.
- 24 THE COURT: All right.
- 25 Mr. Moseley.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE DEFENDANT: All right if I stand here, sir?

2 THE COURT: Yes, sir. Just make sure you keep
3 your voice up, okay?

4 THE DEFENDANT: Okay.

5 CROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q. You stated that we allegedly went to Steve, may he rest
8 in peace, house and he gave Corey the gun, right?

9 A. Right.

10 Q. So Corey had the gun on the way to the victim's house?

11 A. Right.

12 Q. Now, do you remember speaking with a Mr. Flamini,
13 federal agent?

14 A. Yeah.

15 Q. And you stated they then decided to rob Tory York with
16 a gun for drugs. So Durant gave Moseley the black .38
17 caliber revolver with the rubber grip. That's what you
18 told him, August the 7th, 2003?

19 A. (The witness shakes head.)

20 THE COURT: You need to answer out loud.

21 BY THE DEFENDANT::

22 Q. It's in black and white.

23 A. No.

24 Q. So you didn't tell him that?

25 A. No.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 Q. Okay. You also stated that we wasn't promised no deal.
2 You didn't receive no time cut from the feds, you
3 received no profit deal?

4 A. Not off that, no.

5 Q. So you didn't get seven years three years knocked off
6 for that?

7 A. No.

8 Q. I have it right here, your whole profit --

9 A. Not off that, no.

10 Q. That's what it states, though?

11 A. But not off that.

12 Q. So what was it off?

13 A. It was something else.

14 Q. What was it off?

15 A. Statements in another trial that I participated in.

16 Q. Another trial?

17 A. Right.

18 Q. But you -- hold up. Hold up. Because these statements
19 go back to that time when you made -- all this is 2003
20 when you was talking to them. Look at them, May 19,
21 2003, plea agreement as to Lonnie Dozier. This is your
22 whole --

23 A. Can I say something?

24 THE COURT: You can answer the question, yes, sir.

25 BY THE DEFENDANT::

LONNIE DOZIER CROSS BY MR. MOSELEY

1 Q. So you saying you did not get seven year and three
2 months knocked off your sentence?

3 A. Not off that. Not off this (indicating).

4 THE COURT: Okay. You explain it if that's what
5 you --

6 THE WITNESS: I can explain myself?

7 THE COURT: Yes, sir.

8 THE WITNESS: Okay. I got my seven years off for
9 something totally different, that's what I'm telling you.

10 BY THE DEFENDANT::

11 Q. And when was that?

12 A. Back in '11, 2011 or 2012, one of them.

13 Q. But here it says 2003?

14 A. How? Like, only way --

15 Q. It states your plea agreement and it gives you the time
16 cut.

17 MS. BARR: Judge, we're --

18 BY THE DEFENDANT::

19 Q. This is the plea agreement --

20 MS. BARR: Your Honor, we're going to object --

21 THE COURT: Wait a second.

22 Yes, ma'am?

23 MS. BARR: Your Honor, we're going to object to
24 the Defendant testifying. I think he can ask the witness a
25 question and the witness can answer it.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: He can --

2 You can approach the witness, Mr. Moseley -- of
3 course if anybody wants to approach the witness, they have
4 to ask, but you can approach the witness and show him what
5 you're talking about.

6 THE DEFENDANT: May I approach the witness?

7 THE COURT: Yes, sir. And -- yes, sir, you can
8 come on up with him. Show him what you're talking about.

9 And, Ms. Barr, you can come around the other side.

10 And, Mr. Carraway, if you'd like.

11 Just point to --

12 BY THE DEFENDANT::

13 Q. 2003, the times you were talking to Mr. Flamini, you
14 just stated that all of this was 2010, that was your
15 plea deal right there. And it's --

16 THE COURT: Now, let him look at it. Okay?

17 THE DEFENDANT: Okay. I sorry.

18 THE COURT: Let him look at it.

19 (pause.)

20 THE DEFENDANT: Your Honor, can I ask you a
21 question, sir?

22 THE COURT: Let him finish that and we'll get
23 everybody up here, then you can, okay?

24 Mr. Carraway, you might as well work yourself on
25 up here. He wants to have a bench conference.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE DEFENDANT: It's not necessary.

2 THE COURT: Well, I'll have one any way.

3 While he's reading that, why don't Ms. Barr, you
4 and Mr. Moseley and Mr. Carraway come up here.

5 (Whereupon, a bench conference was held
6 off the record, in the presence of the
7 jury, but out of the hearing of the
8 jury.)

9 THE COURT: All right. Have you finished looking
10 at that, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Moseley, as I indicated, you can
13 ask him the details of what the other matter was if you'd
14 like or you can continue with that subject over Ms. Barr's
15 objection.

16 THE DEFENDANT: Can I have the other details of
17 the other incident?

18 THE COURT: You can back up little bit. The rules
19 don't permit lawyers to stand right next to the witness like
20 they do on TV. It doesn't work like that.

21 Now you can ask him. Go ahead.

22 BY THE DEFENDANT:

23 Q. What was the other incident from 2003?

24 MS. BARR: Judge, we're going to object on
25 relevance.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: Overruled.

2 MS. BARR: Your Honor, may we approach?

3 THE COURT: Yes, ma'am.

4 (Whereupon, a bench conference was held
5 off the record, in the presence of the
6 jury, but out of the hearing of the
7 jury.)

8 THE COURT: Ladies and gentlemen, go to your jury
9 room, but do not, as you know, discuss the case in any way
10 at all. We'll have you back out very shortly.

11 (Whereupon, the jury left the courtroom
12 at 4:09 p.m.)

13 THE COURT: Ms. Barr, to make sure the record is
14 complete.

15 Mr. Moseley, your question was could you please
16 give me the details on the other matter? I assume that's in
17 conjunction with the seven years.

18 Sir, if could you answer that, please?

19 Ms. Barr, would you mind him answering that
20 in-camera?

21 MS. BARR: No, Your Honor.

22 THE COURT: Go ahead, Mr. Dozier. What were the
23 details?

24 THE WITNESS: It was some other stuff that I
25 have -- me and several other guys.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: And what kind of case was that?

2 THE WITNESS: That was a murder, that was another
3 murder.

4 THE COURT: So you gave information in a murder
5 case?

6 THE WITNESS: Right.

7 THE COURT: Okay. All right. Is that the
8 complete answer to the question?

9 THE WITNESS: Right.

10 THE COURT: And that was the seven years and some
11 months that was --

12 THE WITNESS: Right, that's been taken off of
13 that.

14 THE COURT: Okay. All right.

15 Ms. Barr, your objection?

16 MS. BARR: Judge, it would be based on relevance
17 grounds.

18 THE COURT: Okay. Of course, the definition of
19 relevance, does it have the reasonable probability to prove
20 or disprove an issue in the case. How about the issue of
21 his believability in conjunction with giving information
22 that might result in less time for him?

23 MS. BARR: Judge, as it relates to that, I think
24 Mr. Moseley has explored that issue. That's been asked and
25 answered. The witness has already given testimony that he

LONNIE DOZIER CROSS BY MR. MOSELEY

1 helped to prosecute a case or was involved in the
2 prosecution of a case and as a result of that, he received a
3 seven year reduction in his time, and so that information is
4 already before the jury. So we would just object to going
5 any further than that as to the nature of the offense.

6 THE COURT: All right.

7 Mr. Carraway, do you have --

8 I'll come to you in the second.

9 Mr. Carraway, do you have any input on this or any
10 position on this?

11 MR. CARRAWAY: I have no position. I have nothing
12 I can add to it.

13 THE COURT: Mr. Moseley, your response to her
14 objection?

15 THE DEFENDANT: Yes, sir. I would like his rap
16 sheet and, also, I need to ask him when did this murder
17 happen.

18 THE COURT: You're talking about Mr. Felder's
19 case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You can answer that while the jury is
22 out. When did that happen?

23 THE WITNESS: Like in 2001.

24 THE COURT: Okay. And his name was what?

25 THE WITNESS: Johnny Felder.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: He was the victim?

2 THE WITNESS: No, he was the who killed the guy.

3 THE COURT: What was the victim's name, do you
4 know?

5 THE WITNESS: No. No, sir.

6 THE COURT: All right. And then you want his rap
7 sheet?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You have Mr. Dozier's rap sheet?

10 BY THE DEFENDANT:

11 Q. And did you receive any time cut for that?

12 A. Exactly.

13 Q. That's the time cut you received?

14 A. Exactly.

15 Q. So there's no deal for this here?

16 A. There was no promise.

17 Q. There's no -- but you have immunity, right, you stated
18 that?

19 A. Right.

20 Q. Immunity. So immunity comes with no deal?

21 A. No promise. There's no promise that I would get
22 anything for it.

23 Q. All right.

24 THE DEFENDANT: Your Honor, I'm waiting for the
25 rap sheet.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: Okay. You have his rap sheet, Ms.
2 Barr?

3 MS. BARR: Judge, I do. And I gave it to
4 Mr. Barr, but I'll be happy to make another copy of it and
5 give it to Mr. Moseley. Do you want me to do that just
6 while we're on break now?

7 THE COURT: You ask him right now in case
8 Mr. Dozier can recall what his criminal record is and we can
9 take it from there.

10 THE DEFENDANT: Some of these, I would like to ask
11 in front of the jury.

12 THE COURT: Okay.

13 All right. Let's take -- we're going to take a
14 very short break. This will be less than five minutes.

15 And Ms. Barr, if you have the rap sheet, you can
16 hand it to somebody to make a copy. And the Mr. Dozier can
17 be wherever y'all want him to be. Okay. He can either stay
18 right there or you can put him in another place. This will
19 be a very short break.

20 (Whereupon, a short recess was held.)

21 THE COURT: -- position with regard to any
22 non-admissible convictions -- or inadmissible would be right
23 word.

24 MS. BARR: Judge, I'm sorry, I gave Mr. Brown the
25 wrong rap sheet. I gave him the rap sheet of Cory Liner.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE DEFENDANT: Well, I need that, too.

2 THE COURT: Well, that one's not pertinent for
3 this witness. You can have it.

4 THE DEFENDANT: I --

5 THE COURT: Remember, when I'm talking, you can't.

6 THE DEFENDANT: Yeah, I'm sorry.

7 THE COURT: Yeah. If Mr. Liner's not going to
8 testify, his rap sheet is not going to be of immediate
9 concern, let's say.

10 THE DEFENDANT: I was mentioning that paper I gave
11 you, that was on that, that's what I was asking for, that's
12 why I said that.

13 THE COURT: Okay. Do you have Mr. Dozier's rap
14 sheet?

15 MS. BARR: I do, Your Honor. He's got a charge
16 for felony possession of a firearm. He plead guilty on
17 05/29/2003, and that was a part of the 327-month prison
18 sentence. He also was convicted of possession of a weapon,
19 which was also in connection with that charge and armed
20 robbery and conspiracy to commit armed robbery.

21 THE COURT: Which he's already testified about?

22 MS. BARR: Yes, sir.

23 THE DEFENDANT: That's the copy you're giving me?

24 MS. BARR: No, I've got to make a copy. I gave
25 you the wrong one.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 He has a conviction in 1995 for strong armed
2 robbery and possession of a weapon. He received a YOA
3 sentence, Judge. I think that that's not admissible.

4 THE COURT: Why is that?

5 MS. BARR: Because it's outside the ten-year
6 period and he's no longer in confinement.

7 THE COURT: Okay. Go ahead.

8 THE DEFENDANT: I --

9 THE COURT: Wait just a second. We'll go over
10 these one by one.

11 MS. BARR: He has a conviction for open container
12 in 2001, for public disorderly conduct in 2002, and, Judge,
13 his rap sheet shows that an armed robbery kidnapping case
14 from Lake City in 2002 was not processed. I'm assuming
15 because it was picked up by the feds. But that's the extent
16 of his rap sheet.

17 THE COURT: Okay. All right. I will allow him to
18 question Mr. Dozier, of course, about the armed robbery he's
19 currently incarcerated for, the conspiracy he's currently
20 incarcerated for and the two weapons charges that he's
21 currently incarcerated for. The open container and public
22 disorderly conduct, neither carries more than a year in
23 prison. They are both remote anyway. Neither is a crime of
24 dishonesty.

25 So Mr. Moseley, do you want to get into his

LONNIE DOZIER CROSS BY MR. MOSELEY

1 conviction of open container and disorderly conduct?

2 THE DEFENDANT: I'm consulting with her and asking

3 -- I can't get a whole copy --

4 THE COURT: Well, he, evidently, has a copy
5 somewhere, but let's make another copy and maybe if there's
6 a machine up here on the floor that would be --

7 THE DEFENDANT: I never had a copy, sir.

8 THE COURT: Well, I'm not going to get into that.
9 She said she gave you one. You said you don't have it. So
10 we're going to remedy that by getting you a copy now. The
11 evidentiary rules are fairly clear as to what that rule
12 says. What's hard is what you do about a particular
13 situation. It sounds like to me the strong armed robbery in
14 1995 is the one you might want to get into. Is that
15 correct?

16 THE DEFENDANT: Yes, sir. We was at Lee County
17 together.

18 THE COURT: I understand that. But here's what
19 the rule says, okay, under rule 609 of the rules of
20 evidence, evidence that a witness, that's Mr. Dozier, other
21 than the accused has been convicted of a crime shall be
22 admitted subject to rule 403 if the crime was punishable by
23 imprisonment in excess of one year, but it's not admissible
24 if more than 10 years has elapsed since the date of the
25 conviction of the release from confinement unless certain

LONNIE DOZIER CROSS BY MR. MOSELEY

1 criteria are met. Mr. Dozier was convicted of strong armed
2 robbery in 1995. He, obviously, was released more than 10
3 years ago. You have to establish that the probative value
4 of that conviction substantially outweighs the danger of
5 unfair prejudice. I have to take into account five factors,
6 the impeachment value of the crime, the point in time when
7 that conviction and his subsequent history --

8 THE DEFENDANT: You said impeachment factor?

9 THE COURT: The impeachment value of the crime.

10 THE DEFENDANT: Okay. So like -- make sure I'm
11 understanding this, so, basically, what you're telling me I
12 may be able to bring this up on the impeachment factor --
13 he's in prison now for robbery.

14 THE COURT: What I'm saying is is that that helps
15 you, okay?

16 THE DEFENDANT: (The witness nodded head.)

17 THE COURT: These five factors I have to take into
18 account, the impeachment value of the crime, the point and
19 time of that -- number two, the point in time of that '95
20 conviction and his subsequent criminal history and the
21 centrality of the credibility issue and two other factors
22 that don't have any bearing on the matters we're here about
23 today.

24 THE DEFENDANT: What's the fourth one again, sir?

25 THE COURT: Well, I only gave you three. The

LONNIE DOZIER CROSS BY MR. MOSELEY

1 centrality of the credibility issue.

2 THE DEFENDANT: Impeachment value of the crime and
3 time of the conviction and substance crime -- substance of
4 the criminal issue.

5 THE COURT: Subsequent criminal history.

6 THE DEFENDANT: Okay.

7 THE COURT: And, obviously, Mr. Moseley, the two
8 charges that were dismissed in 2002 I'm not going to let you
9 get into because those are not convictions.

10 THE DEFENDANT: Okay.

11 THE COURT: You don't want to get into the open
12 container and disorderly conduct, do you? Neither one of
13 those carry more than a year and they're not crimes of
14 dishonesty. I'm not going to allow those, so let's devote
15 out time to the strong armed robbery.

16 All right. Mr. Moseley, you want to be heard on
17 the strong armed robbery coming in?

18 THE DEFENDANT: Yes, sir, soon as I get a chance
19 to see it with her and see what kind of --

20 THE COURT: Okay.

21 MS. BARR: My apologizes, Your Honor, there are
22 certain things I have to redact, they're social security
23 numbers.

24 THE COURT: Okay.

25 THE DEFENDANT: Your Honor, sir?

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: Yes, sir.

2 THE DEFENDANT: May I ask, she said she wanted
3 to --

4 THE COURT: Speak up for me.

5 THE DEFENDANT: She said she -- one more person,
6 can I ask who --

7 THE COURT: I was going to ask her that, too.
8 Who is that, Ms. Barr?

9 MS. BARR: Chief Graham.

10 THE COURT: Okay. Chief Graham.
11 Okay. Are y'all finished looking at the rap
12 sheet?

13 MS. BARR: Your Honor, I just got to where it
14 starts.

15 THE COURT: Okay.

16 (pause.)

17 THE COURT: What's your position on the armed
18 robbery -- excuse me, the strong armed robbery from 1995?

19 THE DEFENDANT: Your Honor, I would like to
20 present this issue.

21 THE COURT: You would like to present that?

22 THE DEFENDANT: Yes, sir, in the presence of the
23 jury because me and him was at Lee County at that point in
24 time.

25 THE COURT: What's that got -- why were you there?

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE DEFENDANT: I had a armed robbery.

2 THE COURT: Okay. Are you going to get into that
3 with this witness? I'm talking about your armed robbery?

4 (pause.)

5 (Mr. Moseley consults with standby counsel.)

6 THE COURT: Mr. Moseley, I'll be glad to hear your
7 argument on the -- and Mr. Carraway, for that matter, on the
8 strong armed robbery from 1995.

9 THE DEFENDANT: I'm not going to mention it, sir.

10 THE COURT: Okay. All right.

11 Now, we're --

12 Yes, ma'am, Ms. Barr?

13 MS. BARR: Judge, in light of what we anticipate
14 the weather conditions to be, I was planning on calling the
15 officer so I could lay the foundation for the SLED firearms
16 examiner to come in and I don't think he'll be long, but I
17 didn't want to break it up such that I call him today and
18 possibly not call the examiner until Wednesday or whenever
19 we resume court. Is that all right with Your Honor?

20 THE COURT: So in other words, this would be the
21 last witness?

22 MS. BARR: Yes, sir.

23 THE COURT: Okay. And here's what I plan to do, I
24 plan on not doing anything in court tomorrow.

25 MS. BARR: Okay.

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1 THE COURT: Our earliest start date on Wednesday
2 would be noon. Our rule requires us to go by the county's
3 closing times, so if the county building are closed all day
4 Wednesday, we'll be closed all day Wednesday. If what had,
5 apparently, been a midday Tuesday into Wednesday even, now
6 is going to be an all day Tuesday and maybe not all day
7 Wednesday event. So our target time to resume will be
8 Wednesday at noon weather permitting.

9 MS. BARR: Yes, sir.

10 THE COURT: Okay.

11 Ready for the jury, Ms. Barr?

12 MS. BARR: Yes, sir.

13 THE COURT: Mr. Carraway?

14 MR. CARRAWAY: Ready, Your Honor.

15 THE COURT: Mr. Moseley, are you ready for the
16 jury to come back in?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right.

19 (Whereupon, the jury returned to the
20 courtroom at 4:41 p.m.)

21 THE COURT: All right.

22 Mr. Moseley, you can continue questioning the
23 witness. And you can stay right there if you'd like or you
24 can get closer.

25 THE DEFENDANT: I'd like for Mr. Dozier to read

LONNIE DOZIER CROSS BY MR. MOSELEY

1 this.

2 THE COURT: Okay. Hand that to him, please.

3 BY THE DEFENDANT::

4 Q. Would you please read --

5 THE COURT: Let him read it to himself, then

6 you'll have to show Ms. Barr, too.

7 Don't read it out loud.

8 (pause.)

9 THE COURT: All right. You can hand it, please,
10 to the officer for Ms. Barr to look at.

11 All right. Ms. Barr, do you have any issues with
12 him referring to that document?

13 MS. BARR: Not just from the outset, Your Honor.

14 THE COURT: All right. Mr. Carraway, have you
15 seen it?

16 Show it to him, please, Mr. Moseley.

17 (pause.)

18 THE COURT: Any issues, Mr. Carraway?

19 MR. CARRAWAY: No, Your Honor.

20 THE COURT: All right. You can ask him about it.
21 Please, sir, hand it to the witness.

22 BY THE DEFENDANT:

23 Q. Mr. Dozier, could you please read to the jury the
24 highlighted parts?

25 MS. BARR: Now, Judge, we would have an objection

LONNIE DOZIER CROSS BY MR. MOSELEY

1 to that.

2 THE COURT: Okay. I don't even know what it is,
3 so hand it to me and let's get it marked for ID.

4 Would you like to be heard, Ms. Barr, on that
5 outside the presence of the jury?

6 MS. BARR: Please, Your Honor.

7 THE COURT: Ladies and gentlemen, please go to
8 your jury room. Do not discuss the case.

9 (Whereupon, the jury leaves the
10 courtroom.)

11 (Defendant Moseley Exhibit No. 1 marked
12 for identification.)

13 THE COURT: All right. This is Defendant Mr.
14 Moseley's Exhibit No. 1 for ID.

15 What is the document, please, sir?

16 THE DEFENDANT: He informed the jury --

17 THE COURT: No, what is the document?

18 THE DEFENDANT: Oh, this is a document, a sworn
19 statement he gave to Mr. Flamini from the FBI file. His
20 name is on the file.

21 THE COURT: All right. Is this the whole
22 statement?

23 THE DEFENDANT: No, I have other pages here, sir.

24 THE COURT: All right. This says page two. Just
25 hand me -- there's, evidently, a page three because the last

LONNIE DOZIER CROSS BY MR. MOSELEY

1 word on this page is the word at.

2 Ms. Barr, what is your objection?

3 MS. BARR: Your Honor, I recognize that we're
4 dealing with a pro se litigate, but he is, certainly, bound
5 by the rules of evidence. And I think if there is a
6 question for the witness, then he is entitled to answer that
7 question unless there's an objection to the contrary and the
8 Court sustains the objection, but I think just to have him
9 read a document is improper.

10 THE COURT: Well, what I would like to find out,
11 if the whole document purports to be a signed statement from
12 this witness and the witness identifies his signature on it,
13 that's one thing. If this is the investigator's summary,
14 your point is well taken. In that event, under rule 613, I
15 think it is, he at some point may be permitted to introduce
16 certain parts of this statement if it is inconsistent with
17 what he's offered to this jury.

18 THE DEFENDANT: Sir?

19 MS. BARR: And --

20 THE COURT: Do you have the remaining parts to
21 this statement?

22 THE DEFENDANT: I'm looking for it now, sir. But
23 I wanted to add to this while you saying that, but I was
24 making -- the point of what I made before they first left,
25 he stated to the feds that I had the gun the whole time,

LONNIE DOZIER CROSS BY MR. MOSELEY

1 then he turned around and said Corey had it.

2 THE COURT: And you can, certainly, impeach him on
3 that, but you couldn't argue with -- he testified on direct
4 that Corey had the gun. Corey got the gun from Steve Durant
5 and when Tory didn't want to buy it, he put it on the
6 armrest and that you picked it up, got out of the and walked
7 around and shot him.

8 Now, it is different somewhat from what this
9 highlighted part says because it does say that Durant gave
10 you the gun, so you are correct. Now, if it is -- if you
11 have the entire statement other than this one page, it will
12 give me a perspective on who altered this statement.

13 MS. BARR: Your Honor, it --

14 THE COURT: It refers to Mr. Dozier in the third
15 person. It doesn't say I. It doesn't say me. It says
16 Dozier.

17 THE DEFENDANT: What date is on that, sir?

18 THE COURT: 08/07/2003.

19 THE DEFENDANT: 08/27?

20 THE COURT: 08/07/2003.

21 THE DEFENDANT: What page is that?

22 THE COURT: This is page two.

23 And now, Mr -- Ms. Barr, if Agent Flamini or
24 whoever wrote this, they can be cross-examined on it because
25 under 613(b), that might be extrinsic evidence of prior

LONNIE DOZIER CROSS BY MR. MOSELEY

1 inconsistent statement.

2 MS. BARR: Yes, sir.

3 THE DEFENDANT: Your Honor, sir --

4 THE COURT: So Mr. Moseley, you have already
5 examined the witness on what he said, perhaps, differently
6 to Mr. Flamini. What I will allow you to do is say
7 something to the effect of isn't it true, Mr. Dozier, that
8 you said something different to Agent Flamini? And if he
9 says no, I didn't, then you're stuck with that until Flamini
10 takes the stand. Okay?

11 THE DEFENDANT: Okay.

12 THE COURT: Okay. So I'll -- this is going to be
13 marked for ID for right now, which means the court report is
14 going to keep it and we'll make a copy for your records.
15 And you can continue to question the witness when he comes
16 back in. Now, I'll let you ask him that question again, but
17 not by using this document.

18 THE DEFENDANT: Okay.

19 THE COURT: Okay. This, apparently, is page one.
20 I'm going to staple them together to keep it all in the
21 right spot. They might get page three, too.

22 Mr. Moseley, are you ready for the jury?

23 THE DEFENDANT: Can you give me two minutes, sir?

24 THE COURT: All right. I'll give you one.

25 THE DEFENDANT: Your Honor, sir?

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: Yes, sir.

2 THE DEFENDANT: I would like to go back to that at
3 another time.

4 THE COURT: All right.

5 THE DEFENDANT: Because I don't have all my files,
6 but I do have that whole page.

7 THE COURT: Okay. That will give you some time to
8 find it, but what we have right now is pages one and two.
9 You've already asked the witness the question once.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you want to ask him that again,
12 that's fine, but I think Agent Flamini will be the most
13 appropriate person to ask under the correct rule.

14 THE DEFENDANT: Okay.

15 THE COURT: Okay. You ready for the jury to come
16 back?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Bring them in.

19 (Whereupon, the jury returned to the
20 courtroom at 4:56 p.m.)

21 THE COURT: All right. Mr. Moseley.

22 BY THE DEFENDANT:

23 Q. Mr. Liner, sir -- not Liner, I mean, Mr. Dozer, sir.

24 You said -- what happened to the gun?

25 A. What happened to the gun?

LONNIE DOZIER CROSS BY MR. MOSELEY

- 1 Q. Uh-huh.
- 2 A. Well, you gave it back to Steve Durant. He got the
- 3 gun. Like I said, he left with it and whatever
- 4 happened to it, I don't know what happened to it.
- 5 Q. So what was your reason for telling the feds this
- 6 story?
- 7 A. Because like I said, I didn't want nothing to come back
- 8 and hunt me done in the near future.
- 9 Q. So you volunteered yourself in a murder?
- 10 A. Exactly.
- 11 Q. Because you had a change of heart?
- 12 A. Exactly. I didn't want it to come back and hunt me.
- 13 Q. So what did you receive for this?
- 14 A. Nothing.
- 15 Q. No immunity?
- 16 A. I didn't receive nothing.
- 17 Q. So why aren't you charged?
- 18 A. So why aren't I charged?
- 19 Q. Uh-huh. Because if I did this crime and you was with
- 20 me, that makes you accessory before and after the fact.
- 21 You should be charged. So you telling the jury
- 22 (indicating) you had a change of heart and you told the
- 23 feds I did this, you did this with me, et cetera, et
- 24 cetera and in the judicial system --
- 25 MS. BARR: Judge, we're going to object.

LONNIE DOZIER CROSS BY MR. MOSELEY

1 THE COURT: You can ask a question. You can't --

2 THE DEFENDANT: Okay.

3 THE COURT: Ask the question.

4 BY THE DEFENDANT::

5 Q. You said you didn't get no deal, no immunity, no
6 nothing?

7 A. I didn't get nothing.

8 Q. So why aren't you charged?

9 A. I can't answer that question. I don't know.

10 Q. So you could have said Ms. Barr did it and that -- it
11 is what it is?

12 A. But I know who did it.

13 Q. So you're saying I did it?

14 A. Yes.

15 Q. So where is your evidence besides your word -- so you
16 mean to tell me you're telling the jury that I did it
17 and it's basically your word that you didn't get
18 nothing for your testimony?

19 A. I'm telling the jury I was there and I saw what I saw.

20 Q. And you was not given nothing?

21 A. Nothing.

22 Q. But you can't give -- tell the jury why you're not
23 charged?

24 A. I --

25 Q. I have nothing further.

LONNIE DOZIER REDIRECT BY MS. BARR

1 THE COURT: Ms. Barr, redirect?

2 MS. BARR: Yes, sir. Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BARR::

5 Q. Mr. Dozier, let me ask you a couple of followup
6 questions. At any point in time between the time you
7 all went to Steve Durant's house and Corey got the gun
8 to the point where you all went back to Mr. Durant's
9 house after the shooting, did you ever have possession
10 of that gun?

11 A. No, ma'am.

12 Q. Did you ever drive the vehicle?

13 A. No, ma'am.

14 Q. Did you drive it to the scene?

15 A. No, ma'am.

16 Q. Did you drive it away from the scene?

17 A. No, ma'am.

18 Q. Did you ever try to rob the victim of anything?

19 A. No, ma'am.

20 Q. At every point throughout this, which part of the
21 vehicle did you occupy?

22 A. The passenger side in the back.

23 Q. In the back?

24 A. Yes, ma'am.

25 Q. Did you ever get out of the vehicle while you were at

LONNIE DOZIER REDIRECT BY MS. BARR

- 1 the victim's house?
- 2 A. No, ma'am.
- 3 Q. Did you do anything to facilitate either a robbery or a
- 4 murder?
- 5 A. No, ma'am.
- 6 Q. Okay. Did you do anything to cover up a robbery or a
- 7 murder?
- 8 A. No, ma'am.
- 9 Q. Did you hide any evidence?
- 10 A. No, ma'am.
- 11 Q. Did you have any evidence to hide?
- 12 A. Not me, no.
- 13 Q. And you've testified that as you sit here on this
- 14 witness stand --
- 15 A. Yes.
- 16 Q. -- you have not been promised any reduction in your
- 17 time to testify in this case?
- 18 A. No, I have not been promised.
- 19 Q. And you have been in jail since when?
- 20 A. 2002.
- 21 Q. Now, you were asked on cross-examination about this
- 22 discussion that took place at the house of Steve Durant
- 23 prior to the murder?
- 24 A. Yes, ma'am.
- 25 Q. And Mr. Carraway, I believe, asked you whether or not

LONNIE DOZIER REDIRECT BY MS. BARR

- 1 there was a discussion about robbery Tory York or
2 whether or not you just assumed there was a discussion
3 about robbing Tory York?
- 4 A. Right.
- 5 Q. Can you tell me specifically whether there was,
6 actually, a discussion or whether or not you just
7 assumed that to be the case?
- 8 A. Right. It was a discussion.
- 9 Q. Okay. Tell us about that discussion.
- 10 A. Okay. When we got there, like I said, we went in the
11 room and Steve was telling them about the incident,
12 what happened --
- 13 Q. Okay.
- 14 A. -- with Tory York and --
- 15 Q. Little D?
- 16 A. Right.
- 17 Q. Okay.
- 18 A. And so that's when Corey was like you have a gun?
- 19 Q. Okay.
- 20 A. He was like yeah. And that's when he gave Corey the
21 gun. And we sat around for a few more minutes and
22 that's when Steve went -- got in the car.
- 23 Q. Okay. What was the purpose in going to Tory's house
24 after there was a question by Corey as to whether or
25 not Steve had a gun? What was the purpose of going at

LONNIE DOZIER REDIRECT BY MS. BARR

1 that point?

2 A. Say that again.

3 Q. What was --

4 MR. CARRAWAY: Objection, Your Honor, that calls
5 for speculation.

6 THE COURT: All right.. You can ask what his
7 purpose was or what he heard anybody state their purpose to
8 be.

9 MS. BARR: Yes, sir.

10 THE COURT: To that extent, the question is
11 proper, otherwise, the objection is sustained.

12 SOLICITOR: I'm sorry, bad question.

13 BY MS. BARR::

14 Q. When Corey asked Steve if he had a gun?

15 A. Yes, ma'am.

16 Q. Did you hear anybody tell you why Steve would be
17 asking -- or Corey would be asking Steve if he had a
18 gun?

19 A. Right.

20 Q. What did you hear them say as to why Corey asked Steve
21 for a gun?

22 A. Well, he was like -- because he told them about the
23 robbery with Little D situation.

24 Q. Okay.

25 A. You see what I'm saying.

LONNIE DOZIER RECROSS BY MR. MOSELEY

- 1 Q. Okay. What was the -- what was the talk between the
- 2 three of them?
- 3 A. You want me to explain what they talk about?
- 4 Q. Right. What was the reason why you all were going to
- 5 Tory's house?
- 6 A. To rob him.
- 7 Q. Of what?
- 8 A. Of the dope.
- 9 Q. And in terms of that being a discussion about going to
- 10 Tory's house to rob him of dope, who all was a part of
- 11 that discussion?
- 12 A. Well, I was in there, me, him, Corey and Steve Durant.
- 13 Q. When you were asked on cross-examination about where
- 14 Corey was and where Steve was and where Tory was at the
- 15 time of the shooting, how far was the house from the
- 16 car when y'all were parked in the yard? Say, for
- 17 example, that the witness stand there (indicating) is
- 18 the front porch where Tory was when you all got
- 19 there --
- 20 A. He was sitting right on the porch.
- 21 Q. So tell me -- I'm going to walk back. Tell me about
- 22 how far the distance was between the front porch where
- 23 he was seated and where y'all were parked in the front
- 24 yard, okay? You tell me when to stop.
- 25 A. Right there.

LONNIE DOZIER RECROSS BY MR. MOSELEY

1 Q. About right here (indicating)?

2 A. Yes.

3 Q. Okay. I'm horrible at measurements. Would that be
4 12 feet maybe? How much would you estimate the
5 distance to be between me and you right now?

6 A. I say about 12.

7 Q. Okay.

8 MS. BARR: That's all the questions I have.

9 THE COURT: Anything else, Mr. Carraway?

10 MR. CARRAWAY: Nothing, Your Honor.

11 THE COURT: Mr. Moseley, anything else?

12 THE DEFENSE: Yes, Your Honor. Outside the
13 presence of the jury, I would like to -- what I need
14 redacted.

15 THE COURT: All right. Go ahead and speak with
16 her for just a minute if you need to.

17 (pause.)

18 RECROSS-EXAMINATION

19 BY THE DEFENDANT:

20 Q. Mr. Dozier, isn't it true that information you provided
21 wasn't going to be used against you unless you violated
22 your plea agreement?

23 A. Yes.

24 THE DEFENDANT: Nothing further, Your Honor.

25 THE COURT: All right. You can step down. Thank

1 you, sir.

2 All right. Now, ladies and gentlemen, we're going
3 to stop for today. Let me have your attention for a few
4 minutes. One of the things I was doing during the break was
5 trying to get a handle on the weather. And as luck would
6 have it, I just got an e-mail from Chief Justice in
7 Columbia. There's a long list of counties that include
8 Williamsburg and for your information, Clarendon, Sumter, a
9 lot of counties in this area, Florence, in the PD. And it
10 says due to forecasted snow accumulation accompanied by ice,
11 all court operations tomorrow are closed, so we will have no
12 court tomorrow. Don't go tell your boss that I said you
13 didn't have to go to work.

14 (Laughter.)

15 THE COURT: I would hope that's the case, but
16 that's not necessarily the case. But I've got -- I'm on
17 your side is you get forced into work. It says this also,
18 Unless I, that Chief Justice Toal, issue a new directive by
19 1:00 o'clock Tuesday, that's 1:00 p.m. I ask that you follow
20 the same schedule for court closer and open courts on
21 Wednesday. In other words, if I don't hear anything from
22 her by one tomorrow, we'll be closed Wednesday, too. From
23 what I understand originally, this was supposed to move in
24 around mid to late morning tomorrow, but now it's,
25 evidently, going to move in five or six a.m.

1 So I'm going to ask Ms. Staggers if there's a way
2 for you to call in after 1:00 o'clock tomorrow, the number
3 that you have on that piece of paper, the call-in number,
4 and you will hear what your instructions are going to be for
5 court on Wednesday. I anticipate that even if the county --
6 or if the buildings are opened, we're not going to start
7 right at 9:30. But for right now, we're definitely closed
8 tomorrow and, perhaps, Wednesday, but call the number that
9 you have after one tomorrow and, perhaps, Ms. Staggers and
10 her staff, if they're able, they've got your phone number,
11 they can call you, too, but you call in, also.

12 Does everybody have the phone number?

13 PROSPECTIVE JUROR: I do not.

14 THE COURT: As you leave, she'll give that to you.
15 Do any of you have any questions?

16 (There was no response.)

17 THE COURT: All right. Now, in the meantime, you
18 cannot discuss the case at all amongst yourselves or with
19 anybody else in the world. Don't read anything about it or
20 listen to anything about it or undertake to gather any
21 information about it. And I know I will not see you
22 tomorrow, perhaps, Wednesday, but perhaps, Thursday.

23 If all things remain equal and we're closed
24 tomorrow and Wednesday, we will definitely be open for
25 business at 9:30 on Thursday unless you see that county

1 offices are also closed Thursday. Okay. Thank you.

2 THE CLERK: Judge James, I just ask that you
3 please call the number that's located on the back of that
4 juror card that you have on tomorrow. We will have a
5 message for you on the system for Wednesday.

6 THE COURT: After 1:00 o'clock?

7 THE CLERK: Yeah, after 1:00 o'clock is fine.

8 THE COURT: Okay. Everybody clear? Thank you for
9 your attention today.

10 (Whereupon, the jury left the courtroom
11 at 5:10 p.m.)

12 THE COURT: Mr. Moseley, Ms. Barr, anything before
13 we break?

14 MS. BARR: I can't think of anything, Judge.

15 THE COURT: All right.

16 Mr. Carraway.

17 MR. CARRAWAY: Nothing, Your Honor.

18 MS. BARR: Judge, if Mr. Moseley will let me know
19 the documents that he has indicated he does not have, I will
20 be happy to make sure he has those so we don't spend time
21 when court is in session getting those to him.

22 THE COURT: Mr. Moseley.

23 THE DEFENDANT: Yes, I would like all of that.

24 THE COURT: The whole Flamini statement?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. She will get that for you.
2 August 7, 2003.

3 MS. BARR: For Mr. Dozier?

4 THE COURT: Dozier.

5 THE DEFENDANT: And, also, sir, I would like to
6 make a motion to submit this document in because --

7 THE COURT: The one you --

8 THE DEFENDANT: No, this is different from
9 Mr. Flamini that was sent to the state -- validating that he
10 was promised a deal that showed the whole plea agreement
11 there.

12 THE COURT: Like I said, you will be able to get
13 into that with Agent Flamini. Okay. We'll mark this for
14 ID.

15 THE DEFENDANT: Okay.

16 THE COURT: This will be Mr. Moseley's No. 2.

17 (Whereupon, Defendant Moseley's Exhibit
18 No. 2 was marked for ID.)

19 THE COURT: And this is a 01/19/2006 -- well, it
20 speaks for itself. That will be ID No. 2.

21 THE DEFENDANT: One more thing, sir, I'm sorry.

22 THE COURT: All right.

23 THE DEFENDANT: I would like to call when we do
24 come back --

25 THE COURT: Your parents, their names?

1 THE DEFENDANT: -- Smith and Jessie Smith.

2 THE COURT: Well, you have to wait for your case.
3 They're not going to be called during the State's case. Ms.
4 Butcher can explain that to you.

5 We're adjourned.

6 (The following proceedings were
7 concluded for January 27, 2014.)

8 (The following proceedings were held on
9 January 30, 2014.)

10 THE COURT: Okay. We'll go back on the record now
11 with the State v. Arthur Moseley and Corey Liner. I think
12 we might be waiting on a couple of jurors.

13 Anything from the State before we start?

14 MS. BARR: Yes, sir, one matter. If Your Honor
15 please, as we recessed court on Monday, Mr. Moseley came up
16 to me and indicated that he had two alibi by witnesses,
17 including his mother, Gloria Moseley Smith and his father,
18 Jessie Smith. They were identified on the defense's witness
19 list, however, I do understand that Mr. Arthur Moseley is
20 not an attorney, but I'm entitled to certain information in
21 regards to his notice of intent to offer an alibi defense.

22 Again, Judge, we supplied his then counsel of
23 record with our discovery. We filed it at the same time.
24 It was a rule five motion requesting notice of alibi and
25 noise of intent to offer insanity defense. So I would ask

1 the Court that if Mr. Moseley does intend to call those
2 individuals as alibi witnesses that he give the State the
3 notice that we're entitled to under rule five. And, again,
4 it's supposed to, at least, be within 10 days prior to
5 trial. It's supposed to be 30 days after discovery, but,
6 certainly, within 10 days prior to trial.

7 Judge, again, I'm mindful of the fact that he is a
8 pro se litigate, but I do think that we're entitled to that
9 information.

10 THE COURT: All right. Mr. Moseley, any response
11 to that?

12 THE DEFENDANT: Yes, sir. January 27, I presented
13 my motion for alibi witnesses.

14 THE COURT: January 27 of what year?

15 THE DEFENDANT: This year, sir, 2014.

16 THE COURT: All right.

17 THE DEFENDANT: And on there at number 11 was my
18 mother's name and my stepfather name is 12 and 13, my baby's
19 mom name was on there with the rest of these 15 people that
20 has documents that they testified they seen eyewitnesses in
21 the federal documents that I wanted and she was already
22 aware of it. And my mother was here and she's here now,
23 sir. And far as what she said about notifying attorney,
24 Ms. Butcher just now informed me she was notified.

25 THE COURT: Ms. Butcher said what?

1 THE DEFENDANT: She wasn't notified.

2 (pause.)

3 THE DEFENDANT: She didn't receive no discovery
4 from the State.

5 THE COURT: Who didn't?

6 THE DEFENDANT: She got it from another attorney.
7 The other attorney that I had, Ms. Butcher --

8 THE COURT: No, this is --

9 THE DEFENDANT: Not Ms. Butcher, but Ms. Shuler.

10 THE COURT: Right.

11 THE DEFENDANT: She -- she probably gave that
12 information to her, but not to her, sir.

13 I also have all these documents I need to present
14 to the Court along with this amended motion to subpoena this
15 that has Mr. Shannon Coker, Mr. Joseph Graham --

16 THE COURT: No, sir, we're not talking about your
17 motion to subpoena. We're talking about Ms. Barr's
18 contention that you have not provided a timely notice of
19 alibi under rule five.

20 THE DEFENDANT: I did provide written notice, sir,
21 January 27, 2014. I gave --

22 THE COURT: Three days ago?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. The rule says -- rule 5(e)(1)
25 says upon written request of prosecution, stating time, date

1 and place at which the alleged offense occurred, the
2 Defendant shall serve within 10 days or at such time as the
3 Court may direct upon the prosecution a written notice of
4 intention to offer an alibi defense. The notice shall state
5 the specific place or places at which the defendant claims
6 to have been at the time of the alleged offense and the
7 names and addresses of the witnesses upon whom he intends to
8 rely to establish such alibi.

9 Now, Ms. Barr, did you give him the written
10 request?

11 MS. BARR: Your Honor, what I did was I sent the
12 rule five -- request to -- back in October of 2007. In
13 addition on October the 16th of 2013, when I received a
14 letter from Ms. Butcher indicating she was imposing a rule
15 five Brady motion, I told her that -- I wrote to her, and
16 I'm reading directly from the letter, in response to your
17 letter dated July 30th, please be advised that I responded
18 to Defendant's rule five and Brady request --

19 THE COURT: Slow down a little bit..

20 MS. BARR: I'm sorry. From November the 2nd of
21 2007 by mailing 42 items to his then counsel of record.
22 When Public Defender Mandy Shuler was substituted as his
23 counsel, those items were forwarded to her by Verdell. My
24 understanding was that Mandy was going to send them to you.
25 Based on various motions that he's filed, I know that Mr.

1 Moseley was given copies of our discovery responses. I have
2 enclosed a list of documents that were disclosed. In
3 reviewing, please note our request for previously reciprocal
4 discovery. I intend to call this case for trial for the
5 December 2, 2013 term of court. Mr. Moseley indicated
6 intent to call alibi witnesses. Please get those names to
7 me by Friday November 1, 2013. Lastly, I'm extending a plea
8 offer of 30 years on murder and I'll dismiss the remaining
9 counts that have been indicted.

10 THE COURT: All right. Now -- now, obviously, Ms.
11 Barr sent to your then primary counsel, Ms. Butcher, the
12 notice that she's required to serve that would prompt a
13 disclosure of an alibi defense. Why did you wait until
14 Monday?

15 THE DEFENDANT: Sir, I didn't even know I was
16 going to trial, plus the investigator that she hired was
17 looking into this trying to get documents from the hospital
18 that I was --

19 THE COURT: All right. You're changing the
20 subject, Mr. Moseley --

21 THE DEFENDANT: No, you ask --

22 THE COURT: Listen to my question.

23 THE DEFENDANT: Okay.

24 THE COURT: Alibi defense witnesses have nothing
25 to do with your hospitalization. Alibi witness defenses

1 have nothing to do with the other witnesses you want to
2 subpoena. The State is asking under this rule for you to
3 provide any alibi --

4 THE DEFENDANT: I have --

5 THE COURT: -- witness information.

6 THE DEFENDANT: I had no knowledge of that
7 information, sir. I did not even know I was going to trial.
8 I have no attorney, sir. I was not appointed no attorney
9 last week. I was forced to represent myself, sir.

10 THE COURT: No --

11 THE DEFENDANT: I have no knowledge of this rule
12 that you're telling me of, sir. And Mr -- the PI --

13 THE COURT: Well --

14 THE DEFENDANT: -- was trying to contact my mother
15 and that's why I gave you the affidavit asking for a
16 continuance, sir.

17 THE COURT: All right. You can sit down.

18 Ms. Barr, refresh -- or help me out here.

19 MS. BARR: Yes, sir.

20 THE COURT: I was my understanding that
21 Mr. Moseley insisted upon representing himself. Now, he's
22 telling me he doesn't have an attorney and that's -- and
23 he's compromised because of that. I thought he wanted to
24 represent himself.

25 MS. BARR: And, Your Honor, he was given that

1 option to have Ms. Butcher remain as his counsel or to
2 proceed representing himself. He elected last week to
3 proceed representing himself. Judge Newman explained to him
4 the dangers and also told him that he's relieved a prior
5 public defender, that he's filed a grievance of some sort of
6 some complaint against Verdell Barr, who was his attorney,
7 and that because he was indigent he didn't have the right to
8 just have an attorney of record. He wanted a speedy trial.
9 And the judge, certainly, gave him that option to have Ms.
10 butcher to continue on as his lawyer and he said he would
11 prefer to represent himself.

12 THE COURT: All right. Mr. Moseley, you can stand
13 up. Ms. Barr has indicated to me that last week Judge
14 Newman went over this with you and you indicated to him that
15 you wanted to represent yourself and he arranged for
16 Ms. Butcher to be standby counsel, which means --

17 THE DEFENDANT: Sir.

18 THE COURT: You let me finish.

19 THE DEFENDANT: Yes.

20 THE COURT: Which means that she would not be
21 stating any position, arguments or other things on the
22 record, you would do it all yourself. You cannot now say
23 that you are compromised because you don't have counsel. It
24 was offered to you and you've refused it. You have the
25 right to represent yourself and that is what you are doing.

1 So let's get to the point.

2 The rule is -- and you're required to follow the
3 rules even though you're not the lawyer. The rule is that
4 you have to provide information about alibi witnesses when
5 you are served with a request for notice of alibi witnesses
6 by the prosecution. You did that on Monday. You gave them
7 two names, is that correct?

8 THE DEFENDANT: I gave them three, sir.

9 THE COURT: Three? Who is the third one?

10 THE DEFENDANT: My child's mother.

11 THE COURT: And her name?

12 THE DEFENDANT: Yolanda Britt.

13 THE COURT: Yolanda Britt?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you give addresses for all of
16 these people?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. You have those addresses,
19 Ms. Barr?

20 MS. BARR: I do not, Judge.

21 THE COURT: How did you give them to her?

22 THE DEFENDANT: The same paper I handed you, sir,
23 that you said you was going to make copies, sir. The same
24 motion, sir. The address is on there, sir.

25 THE COURT: Did you tell her in that written

1 document that those were alibi witnesses?

2 THE DEFENDANT: Did I state that those are alibi
3 witnesses, no, sir.

4 THE COURT: Well, that's what you have to do.

5 THE DEFENDANT: I did not know that, sir.

6 THE COURT: Well, it doesn't matter. You were
7 supposed to know it if you're going to represent yourself.
8 That's one of the things that Judge Newman --

9 THE DEFENDANT: Well, what's --

10 THE COURT: Do not interrupt me..

11 THE DEFENDANT: Okay, sir.

12 THE COURT: That's one of the things that Judge
13 Newman, undoubtedly, went over with you. And I'm sure that
14 he said lawyers know what motions to make, how to make them,
15 how to say certain things and how to do certain things
16 because lawyers are trained in the rules.

17 Now, the fact that you do not know the rule, quite
18 frankly, is of no consequence right now. You are charged
19 with following the rules. You had the option to have these
20 lawyers and you have indicated that you do not want them.

21 Now, did the notice with those three names in it
22 state the specific place or places at which you claim to
23 have been at the time of the alleged offense?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. That is part of the rule.

1 That's for you to follow. Because she can't do anything to
2 investigate an alleged alibi witness unless she has that
3 information. That's why we have rule 5(e)(1).

4 THE DEFENDANT: Can I have a book to this, sir?

5 THE COURT: Can you have the rule book?

6 THE DEFENDANT: Yes, sir, because I don't have
7 that.

8 THE COURT: Well, I've got mine, but I need it. I
9 do not know whether Ms. Butcher has one or not. I assume
10 she has one, at least, maybe on the computer. But see, this
11 is the kind of thing that we have to charge you with the
12 responsibility of knowing. When I say we, the court system.

13 THE DEFENDANT: Sir.

14 THE COURT: Yes, sir?

15 THE DEFENDANT: We was waiting for the
16 documentation from the hospital and we didn't get it.

17 THE COURT: What documentation?

18 THE DEFENDANT: That I was in Belmont Psychiatric
19 Hospital, sir. It's part of the documents that I presented
20 to you from the PI that she had investigated. So I already
21 put -- I put her on that not knowing that I was going to
22 trial. The only reason I ask to represent myself is she was
23 resigning and asking for a continuance at the same time
24 because I did --

25 THE COURT: Ms. Butcher?

1 THE DEFENDANT: Yes, sir. So in order for my
2 motion to dismiss be heard, I had to represent myself.

3 THE COURT: All right. Now, this case --

4 THE DEFENDANT: That's how --

5 THE COURT: This case --

6 THE DEFENDANT: It's where it's at, sir.

7 THE COURT: You were indicted in 2007.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The indictment has the date of the
10 alleged offense -- the offense allegedly committed by you.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: It's now seven years later.

13 THE DEFENDANT: (The witness nodded head.)

14 THE COURT: And I would assume, without getting
15 into any attorney/client information, that you have told
16 your lawyers in the past that you were in a psychiatric
17 hospital at the time of these murders or this murder. Is
18 there some reason why now seven years later that that has
19 not been established by some paperwork?

20 THE DEFENDANT: Sir, I already had affidavits from
21 family members from Philadelphia as well as down here. Mr.
22 Verdell Barr had and after my bond reduction -- my bond was
23 denied, he claimed he did not have it and I asked him about
24 these documents, sir. And I gave --

25 THE COURT: All right. Hand that to me, please.

1 No, one of the officers will get it.

2 THE DEFENDANT: Sir.

3 THE COURT: Well, let me read it. If you want me
4 to read it, I've got to read it.

5 THE DEFENDANT: Okay.

6 (pause.)

7 THE COURT: Did you give these to Ms. Butcher?

8 THE DEFENDANT: Did I what?

9 THE COURT: And it's somewhat difficult for me to
10 understand what you're asking Mr. Barr for in these letters.

11 THE DEFENDANT: Can she -- can she read them, sir,
12 because I no knowledge whether I did or not?

13 THE COURT: Have y'all not gone over these?

14 THE DEFENDANT: She was asking.

15 MS. BUCHER: May I --

16 THE COURT: Yes, ma'am. I don't want you to state
17 any legal position, but --

18 MS. BUCHER: I'm not going to state any legal --

19 THE COURT: It's 12:00 on Thursday. We're
20 supposed to start and now I'm getting this alibi stuff.

21 MS. BUCHER: Your Honor, I had made a motion to
22 continue this case, which Judge Newman referred to you.

23 THE COURT: And Mr. Moseley did not make.

24 MS. BUCHER: He did not make and I don't know if
25 he really understood how. Your Honor, would you like me to

1 tell you the reasons I made that motion?

2 THE COURT: No, ma'am. No, ma'am.

3 MS. BUCHER: Okay.

4 THE COURT: Because the motion has not been made.
5 What I want to know is Mr. Moseley seems to think there are
6 some documents from Belmont Hospital that would prove that
7 he was not anywhere near here at the time of this murder.

8 MS. BUCHER: I hired a private investigator. We
9 had sent subpoenas and things to Belmont, had not gotten a
10 response. I considered his mother to be a weak alibi
11 witness, had not turned that in. I wanted the information
12 to come back from Belmont, which we were waiting on.

13 THE COURT: And it would be hearsay unless
14 somebody from Belmont came.

15 MS. BUCHER: Correct, Your Honor. Or his medical
16 documents, he could, certainly, testify to his own medical
17 document, which would then support --

18 THE COURT: I don't know if he could -- if he
19 didn't prepare them, I don't know if he could or not because
20 it's an out of court statement made by somebody else offered
21 to prove the truth of the matter asserted.

22 MS. BUCHER: I understand that, Your Honor. But
23 that's one thing we were waiting on. And as far as all of
24 these documents from Mr. Barr, I didn't have all of those.
25 I received some stuff from Amanda Shuler and --

1 THE COURT: Did Ms. Shuler request the documents
2 from the hospital?

3 MS. BUCHER: I was the first one to get an
4 investigator on this.

5 THE COURT: That doesn't --

6 MS. BUCHER: I think --

7 THE COURT: I'm not talking about an investigator.

8 MS. BUCHER: Okay.

9 THE COURT: A lawyer can send a letter to Belmont
10 Hospital.

11 MS. BUCHER: I don't have any knowledge that she
12 did. It was not in what was sent to me. That's why I felt
13 like I needed to do it. I had nothing showing me this had
14 been done prior.

15 MS. BARR: And Your Honor, I may be able
16 to interject a little bit --

17 THE COURT: All right. Y'all can have a seat.
18 Thank you.

19 MS. BARR: Your Honor, as it relates to his
20 forensic evaluation for competency, that is part of the
21 Court's record. It's been complied. It indicated that when
22 he was evaluated on August the 28th of 2013 that they
23 requested medical records from a mental hospital in
24 Philadelphia and as of that time, they had not received
25 them. It indicates on page two of the report that Belmont

1 Hospital Center for Comprehensive Treatment in Philadelphia,
2 Pennsylvania indicated they were unable to send the
3 information due to the records being in outside storage.
4 And that's listed in quotations that's contained within his
5 evaluation report.

6 THE COURT: Well, if he -- if there are records,
7 Ms. Barr, that show that he was in Philadelphia,
8 Pennsylvania at the time in question, March 23, 2001,
9 wouldn't the State want those, too, to accomplish some sense
10 of justice?

11 MS. BARR: And, Judge, we, certainly, would, but
12 the problem would be for us is one, we don't have subpoena
13 power in the state of Pennsylvania. That would have to be
14 done by of authorization by the Defendant. And, certainly,
15 I would imagine that -- particularly, when it was disclosed
16 in '07 what our evidence was that there would have been some
17 efforts -- and I think it would have been easier to get some
18 information in '07 and '08 than to attempt to try to get it
19 in 2014.

20 THE COURT: Well, I agree with you there. And,
21 obviously, these records are now 13 years old.

22 All right. So that gets us back to the notice of
23 the alibi witnesses. Where is Ms. Britt right now?

24 THE DEFENDANT: In Florence.

25 THE COURT: You know where she lives?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You know where she works?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have her subpoenaed?

5 THE DEFENDANT: I have it on the subpoena, yes,
6 sir.

7 THE COURT: So she's been served with a subpoena?

8 THE DEFENDANT: Probably not. It depends on them.

9 THE COURT: The State will not serve a subpoena
10 for you.

11 THE DEFENDANT: How can I do that, sir?

12 THE COURT: That's between you and your standby
13 counsel. There's subpoena forms. Ms. Butcher can help you
14 with that. I can order a subpoena to be served, but I am
15 not going to draw it up.

16 THE DEFENDANT: So --

17 THE COURT: If -- a lawyer who represents a
18 criminal defendant knows what the form looks like. The
19 subpoenas are issued and served.

20 THE DEFENDANT: So you saying for all these people
21 I want witnesses to, I need a subpoena for them?

22 THE COURT: Yes, sir. And those are the kinds of
23 things that are talked about you and counsel and they're
24 done and it's very, very routine. But the subpoenas aren't
25 issued by me declaring from the bench that these witnesses

1 are hereby under subpoena. It's got to be written, it's got
2 to be signed, it's got to be stamped and it's got to be
3 served. Now, your mother and your father, I trust, would
4 appear voluntarily, but all of those other people, I don't
5 know. I don't know.

6 THE DEFENDANT: (The witness nodded head.)

7 THE COURT: Sometimes a phone call will do it, but
8 sometime people make phone calls and they say sure, I'll be
9 there at 10 and they never show up. But we're -- we're
10 Thursday and, you know, it's a situation where you've
11 elected to represent yourself after having been advised of
12 the perils of that by Judge Newman and that's what you
13 elected to do.

14 Now, Ms. Butcher is -- I know the investigator
15 whose name I've read, Mr. Davis, is he around here? Is he
16 here to go serve subpoenas?

17 MS. BUCHER: I would have to call him, Your Honor.
18 He's not here. He's from Sumter.

19 THE COURT: Okay. Well, see, that's the kind of
20 thing that's up to you to take care of, Mr. Moseley. It's
21 not up to me or Ms. Barr to take care of. I can, certainly,
22 order a deputy to go pick up a witness who has not responded
23 or appeared pursuant to a subpoena, but I cannot say hey, go
24 pick up these six people. A subpoena is like -- well, it is
25 a subpoena, it's an order to come to court.

1 All right. Now, Ms. Barr, the alibi witnesses
2 whose names that you have, what would you in the normal
3 course of business do if you were given their names and
4 addresses and the nature of places that Mr. Moseley would
5 have been according to their recollection?

6 MS. BARR: Judge, I would have an investigator and
7 myself to meet with that individual if it -- particularly,
8 if he represents that his mom and dad are here. I would
9 just have an investigator meet with them while we're going
10 through the trial.

11 THE COURT: I know your mother is here, is your
12 father here?

13 THE DEFENDANT: My stepfather, yes.

14 THE COURT: Is he is the gentleman you're talking
15 about?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. So they're both here and
18 what are their names?

19 THE DEFENDANT: Gloria and Jessie Smith.

20 THE COURT: Gloria and Jessie Smith. Are Gloria
21 and Jessie Smith here?

22 THE DEFENDANT: Yes, sir.

23 (Mr. and Mrs. Smith raised their hands.)

24 MS. BARR: And, Judge, if I may also, just to note
25 this for the record that also contained in his competency

1 evaluation is a statement by the evaluators that McLeod
2 Regional Medical Center and WES Health Systems of
3 Philadelphia, PA indicated that they were unable to locate
4 records for Mr. Moseley. And so, Judge, that kind of
5 suggest to me that, perhaps, the information that he is
6 seeking -- may not even exist.

7 THE COURT: But it may have existed at some point.

8 MS. BARR: I understand.

9 THE COURT: But the documents themselves may not
10 exist any more. All right. Then what do we do about that?
11 If the jury is thinking okay, well, if he was in the
12 hospital, he would have the records here.

13 All right. Yes, sir, Mr. Moseley?

14 THE DEFENDANT: I asked for a motion to dismiss --
15 sir, and you see the documentation that I was asking my
16 attorney after he relieved himself for my documents back.
17 He had all of my documents, sir. This is no fault of mine,
18 sir.

19 THE COURT: The documents, what documents?

20 THE DEFENDANT: My medical documents and he had
21 affidavits from family members.

22 THE COURT: So you're saying that your lawyer had
23 records from that hospital proving you were there?

24 THE DEFENDANT: Yes, sir. Yes, sir, Mr. Barr did,
25 sir. Yes, he did, sir.

1 THE COURT: Well, how --

2 THE DEFENDANT: Well, if --

3 THE COURT: Who told you that?

4 THE DEFENDANT: I gave them to him, sir, because I
5 have a set myself, sir. I gave him the extra set, sir.

6 THE COURT: And you told --

7 THE DEFENDANT: All I got now, sir, if my mother
8 can find it in a folder because I ain't been able to get a
9 chance to talk to her. I had three folders before I got
10 locked up. I had them hidden in my room with all my medical
11 files. I don't have the date that I went in the hospital.
12 I have the date that I left.

13 THE COURT: The date you went in which hospital?

14 THE DEFENDANT: Belmont Hospital, sir. I have the
15 date that I got out.

16 THE COURT: When did you get out?

17 THE DEFENDANT: March like the 25th, 7th,
18 something like that, sir.

19 THE COURT: Three or four days after the murder?

20 THE DEFENDANT: Yes, sir, within that time period.

21 THE COURT: And you had that in your mind or you
22 had that on paper?

23 THE DEFENDANT: No, at the house on paper, sir.

24 THE COURT: It's at the house?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Well, why --

2 THE DEFENDANT: I haven't been able to talk to my
3 parents or nothing, sir.

4 THE COURT: You --

5 THE DEFENDANT: Since this whole trial thing came
6 up, she tried to talk to me and I haven't been able to talk
7 to her. I have no money or phone to call or nothing.

8 THE COURT: Has she been to see you at Park County
9 Detention Center?

10 THE DEFENDANT: I'm off lock up now. She cannot
11 call and do it. They finally let me off lock up. I had
12 a -- and that's for a week following --

13 THE COURT: Has she come to see you?

14 THE DEFENDANT: No, sir, because she can't.

15 THE COURT: Well, she better go find those papers
16 right now.

17 THE DEFENDANT: Can I tell her where to look for
18 them, sir?

19 THE COURT: (The court nodded head.)

20 THE DEFENDANT: It's in my room. I have three or
21 four folders, all my medical files.

22 THE COURT: We're not going to get into a
23 discussion with y'all. If she wants to come up and you talk
24 to her very briefly, that's fine. But we are past the 11th
25 hour of this.

1 Ms. Barr, while -- well, he has to listen to all
2 this, so I'll just wait.

3 (pause.)

4 THE COURT: Yes, sir?

5 THE DEFENDANT: Another reason that PI was trying
6 to get the files and I was trying to get these files, also,
7 sir -- December 2nd. December 2nd, I asked for any
8 documents from them. I've been trying to obtain these
9 files. It's like over 13 years has passed, sir, so I'm sure
10 they don't have it in the same place, sir.

11 MS. BARR: Your Honor, we can, certainly, give a
12 call to Charles Barr and ask him just to bring the file
13 over.

14 THE COURT: You know, it would have been nice for
15 me to have know this earlier in the week.

16 THE DEFENDANT: The investigator tried to do that,
17 sir.

18 THE COURT: No, it would have been nice for me to
19 have known this earlier in the week.

20 THE DEFENDANT: Well, I have no knowledge of no
21 subpoena thing. I been trying to get from all my attorneys
22 a South Carolina rules of evidence book, sir, even from the
23 jail that I'm locked up at, sir. I been trying get a rules
24 of evidence book and they won't let me have one.

25 THE COURT: Well, rules of evidence aren't in play

1 right now.

2 THE DEFENDANT: Well --

3 THE COURT: Okay.

4 THE DEFENDANT: Okay.

5 THE COURT: It's a situation where you have been
6 afforded the opportunity to have counsel and you've elected
7 to represent yourself. I do not know if Ms. Shuler is in
8 town. I do not know if she's inclined to come over here.
9 But you fired her or you asked for her to be relieved and
10 she was.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: And I assume the same happened with
13 Mr. Bar, is that correct?

14 THE DEFENDANT: No, sir. He took himself off the
15 case claiming conflict of interest. He was a paid attorney,
16 he was not appointed.

17 THE COURT: And conflict of interest because?

18 THE DEFENDANT: Claiming he was her relative and
19 other financial issues, sir.

20 THE COURT: And we've already -- no, we've already
21 been over that. I will state for the record that Kimberly
22 Barr and Verdell Barr during his life and now have no family
23 relation. They're not related by blood or marriage. Even
24 if they were, that is not a reason to be removed
25 necessarily. I guess in some instances, it could be. So

1 that's not going to work.

2 THE DEFENDANT: I'm not trying to make an excuse,
3 sir, but I been trying get my transcripts from there so I
4 could know exactly what was said on that day. I already
5 paid for the transcripts. I haven't seen them.

6 THE COURT: Transcript of what?

7 THE DEFENDANT: The bond revocation hearing so I
8 would know everything that was said and mentioned, sir.
9 I've already paid Ms. Staggars and I haven't received it
10 yet.

11 THE COURT: Ms. Staggars doesn't do transcripts.
12 She doesn't type transcripts.

13 THE DEFENDANT: But she sent me a letter saying I
14 have to pay 30-dollars. I sent you certified mail. I still
15 have the receipt that you got it.

16 THE COURT: The only thing I can do --

17 THE DEFENDANT: I.

18 THE COURT: The only thing I can do now is
19 continue with the trial. I cannot in the what is arguably
20 the middle of the trial, even through we've only been
21 through one witness, I cannot stop and allow you to press
22 forward unless you or Mr. Carraway or -- well, Ms. Barr
23 can't, makes a motion for a mistrial.

24 THE DEFENDANT: I would like to make a motion for
25 a mistrial, sir.

1 THE COURT: And the basis is what?

2 THE DEFENDANT: The basis is because it's over
3 eight years, sir, and the pre-indictment was not no fault of
4 my own, sir.

5 THE COURT: That's the basis for a continuance
6 motion, not a mistrial. The basis for a --

7 THE DEFENDANT: Well, one of the reasons, sir, is
8 that you as well as her allowed Lonnie Dozier to make
9 perjury on the stand saying that he had no proffer deal and
10 we have evidence of a proffer deal, sir.

11 THE COURT: I allowed him to do that?

12 THE DEFENDANT: I showed you, also, those
13 documents, sir, and typed it -- B and one, two. He had a
14 proffer deal, sir.

15 THE COURT: I --

16 THE DEFENDANT: That was one of reasons, you
17 saying get Mr. Flamini in here to say that this ain't
18 hearsay that he took that.

19 THE COURT: All right. You're misquoting what I
20 said. I don't type anything. I don't type anything on a
21 document, okay. And, also, I did not say get Mr. Flamini in
22 here. I said if you want him here, you've got to subpoena
23 him. I asked Ms. Barr if she was going to call him and she
24 said she likely would.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: Now, I don't have -- I don't have any
2 knowledge of what kind of deal Mr. Dozier had, so you can
3 take me out of that equation right now.

4 THE DEFENDANT: I have --

5 THE COURT: As far as Ms. Barr's is concerned --

6 THE DEFENDANT: But --

7 THE COURT: Mr. Moseley, do not interrupt me when
8 I'm talking.

9 THE DEFENDANT: Okay, sir.

10 THE COURT: Ms. Barr, do you have any knowledge of
11 a plea agreement or any type of deal that Mr. Dozier got
12 period?

13 MS. BARR: Yes, sir, Judge. He was granted
14 federal immunity for any statements that he made in
15 connection with his knowledge of the murder of Tory York.
16 It's my understanding from his testimony in the presence of
17 the jury and in-camera that he received a seven-year
18 reduction on his sentence because he cooperated in the
19 investigation of a separate murder case.

20 THE COURT: All right.

21 Now, Mr. Moseley, the witness testified that he
22 got immunity. That's a deal. That's probably the best deal
23 you can get is immunity. Now, he testified that he got some
24 time knocked off another -- time knocked off his sentence
25 for cooperation in another murder case. So didn't you get

1 him to admit that he got immunity in this case?

2 THE DEFENDANT: Yes, sir. He said something about
3 he doesn't know why he wasn't charged, sir. He said
4 something to that effect. But I showed him the
5 documentation that he got the seven years. He didn't say
6 anything on the stand. He hasn't showed it in black and
7 white that this is saying that I got it for this crime here
8 when I had the document showing he got it for saying --

9 THE COURT: All right. Ms. Barr, to whatever
10 extent Mr. Moseley has made a motion for a mistrial, what's
11 the State's position?

12 MS. BARR: Judge, we would move to object. We're
13 prepared to go forward. I anticipate if we're able to start
14 now and just kind of move forward that we could conceivably
15 be in a position to rest probably well before lunch
16 tomorrow. We've got Agent Paavel here, who traveled all the
17 way from Columbia to be here today. We've got Dr. Presnell,
18 who's our pathologist, who is coming from Beaufort this
19 afternoon. Judge, we're just ready to press forward.

20 THE COURT: Now, you will be finished tomorrow?

21 MS. BARR: If everything goes smoothly, we
22 anticipate being finished by lunchtime.

23 THE COURT: Well, of course, the Defendants will
24 put up evidence. We'll either be here Saturday, Sunday
25 or -- Monday or all of the above.

1 MS. BARR: Yes, sir.

2 THE COURT: For their presentation of evidence.

3 MS. BARR: Yes, sir.

4 THE COURT: All right.

5 Mr. Carraway, do you have any input into any of
6 this conversation?

7 MR. CARRAWAY: No, Your Honor.

8 THE COURT: All right. Anything else,
9 Mr. Moseley?

10 THE DEFENDANT: I would move for a continuance,
11 sir, there so many documentations that's missing, sir, if
12 you're not going to grant the mistrial.

13 THE COURT: Well, the continuance is something I
14 would have had to have granted before jury was -- excuse me,
15 before the jury was sworn and the trial started, so it
16 wouldn't be a continuance. It would have to be a mistrial.

17 THE DEFENDANT: Sir, I would ask for a mistrial,
18 sir.

19 THE COURT: And the basis for that is?

20 THE DEFENDANT: Due to the lack of -- the lack of
21 evidence they have. They don't have no evidence. They have
22 some -- all of these documents from the federal people
23 stating that it was other people, sir.

24 THE COURT: All right. Ms. Barr, I'm going --

25 THE DEFENDANT: She's not even acknowledging that,

1 sir.

2 THE COURT: All right. I'm going to request that
3 you do get Agent Flamini here whether or not you call him in
4 your case in chief and we'll let Mr. Moseley question him
5 even if you don't call him, but I want him here.

6 THE DEFENDANT: Thank you, sir.

7 THE COURT: Don't -- Mr. Moseley, do not interrupt
8 when I'm talking.

9 THE DEFENDANT: Oh.

10 THE COURT: Do you understand that, Ms. Barr?

11 MS. BARR: Yes, sir.

12 THE COURT: Okay. All right. The motion for the
13 mistrial, I'll take it under advisement. It's denied at
14 this time.

15 (pause.)

16 THE COURT: We'll stand at ease for just a minute.

17 (Whereupon, a short recess was held.)

18 THE COURT: Okay. Any report from -- the juror is
19 No. 91, the second alternate selected. Any report where she
20 is?

21 BAILIFF: She said she's on Highway 41, getting
22 ready to enter -- about 15 minutes before she get to Highway
23 261 in Hemingway. About 35 minutes to 45 minutes before she
24 get here.

25 THE COURT: Okay. Does the State have any

1 position on what I do with regard to the juror?

2 MS. BARR: Your Honor, it's Juror No. 91?

3 THE COURT: Yes, ma'am, Ms. Kelly.

4 MS. BARR: Judge, we would ask that we be
5 permitted to go ahead with the trial. Obviously, we're
6 somewhat prejudiced by the fact that the weather conditions
7 were as they were, so we would ask that we go ahead and
8 proceed with the trial.

9 THE COURT: Mr. Carraway?

10 MR. CARRAWAY: Proceed.

11 THE COURT: Mr. Moseley?

12 THE DEFENDANT: Sir?

13 THE COURT: What's your position on what we do
14 with regard to the juror who's not here?

15 THE DEFENDANT: I think we wait until she gets
16 here or have an alternate.

17 THE COURT: Well, we've got two alternates.

18 THE DEFENDANT: Okay.

19 THE COURT: Go ahead and go?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. You can bring in the jury.

22 MS. BARR: Judge, I just wanted for the record to
23 go ahead and give Mr. Moseley --

24 THE COURT: Wait just a second.

25 MS. BARR: Give Mr. Moseley and Mr. Carraway the

1 rap sheets of the witnesses we anticipate calling, Mr.
2 Willie Chandler and Demtric Mack.

3 THE COURT: All right. Okay. Is the State ready
4 for the jury?

5 MS. BARR: The State's record, Your Honor.

6 THE COURT: The motion for mistrial, again, is
7 denied at this time. I will continue to think about it,
8 Mr. Moseley. We'll address it more fully later if need be.

9 Bring in the jury.

10 (Whereupon, the jury returned to the
11 courtroom at 12:47 p.m.)

12 THE COURT: All right. Thank you for your
13 patience, ladies and gentlemen. As you know, we're
14 waiting -- or were waiting on one more juror to arrive.
15 She's still not here and indications are she's still some 30
16 or 40 minutes away, so we're going to move on forward.
17 Please don't think you're being penalized for your being on
18 time. She'll be attending the rest of the trial, too.

19 Now, we are ready to move forward with the State's
20 presentation of evidence. I do know that we've been out of
21 court for the last two days and I apologize for that.
22 Obviously, it's something we could not do anything about.

23 Now, Ms. Mack, Karen Mack, I'm going to appoint
24 you as foreperson of this jury. That means for me, anyway,
25 it doesn't matter to me where you sit. The bailiffs may

WILLIE CHANDLER DIRECT BY MS. BARR

1 want you in a different place or assigned seat. But just to
2 let you know, you are the spokesperson for the jury. You'll
3 be the one responsible for making sure that the verdicts
4 reached in the case are unanimous, that means all of you
5 have to agree. And it will be your responsibility to relay
6 the questions to me during deliberations and any concerns to
7 the bailiffs or to me during the course of the trial, okay.

8 THE FOREPERSON: Yes, sir.

9 THE COURT: All right. We are ready to move
10 forward.

11 Ms. Barr, you can call your next witness.

12 MS. BARR: Thank you, Your Honor. We call Willie
13 James Chandler.

14 THEREUPON,

15 WILLIE JAMES CHANDLER,
16 after having been duly sworn, testified as follows:

17 THE COURT: Ms. Butcher, I don't know, maybe,
18 Ms. Staggers can help you out, that microphone is flashing,
19 does that mean the battery us running down or --

20 THE CLERK: No, it's just on mute.

21 THE COURT: You don't need it, but when Mr.
22 Moseley begins asking questions, if somebody could hit that
23 push button that says push, then we'll be able to hear the
24 questions.

25 MS. BUCHER: Okay.

WILLIE CHANDLER DIRECT BY MS. BARR

1 THE COURT: State your full name, sir.

2 THE WITNESS: Willie James Chandler.

3 THE COURT: All right.

4 DIRECT EXAMINATION

5 BY MS. BARR:

6 Q. Good afternoon, Mr. Chandler.

7 A. Good afternoon.

8 Q. You are a resident of Williamsburg County?

9 A. Yeah.

10 Q. Okay. What I need for you to do, please, sir, if you
11 don't mind, make sure you keep your voice up so the
12 ladies and gentlemen of the jury can hear you and the
13 court reporter who's taking down everything that you
14 say can hear you as well. Okay?

15 A. Okay.

16 Q. All right. So if you can scoot up your chair just a
17 little bit. That's the microphone in front of you with
18 the little green light, okay?

19 A. All right.

20 Q. All right. Sir, back in March of 2001, where were you
21 living?

22 A. On Thorn Avenue,

23 Q. Okay. And how long have you lived at that address?

24 A. About seven, eight years.

25 Q. Seven or eight years?

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 A. Yeah.
- 2 Q. And did you know the victim in this case, Tory York,
3 during that time?
- 4 A. Yeah.
- 5 Q. How is it that you knew him, was he a neighbor of
6 yours?
- 7 A. Yeah, we had been neighbors.
- 8 Q. Say again?
- 9 A. My neighbor.
- 10 Q. Okay. How far did he live from your house?
- 11 A. About two houses down.
- 12 Q. Two houses down?
- 13 A. Yeah.
- 14 Q. Okay. All right. If you were to be standing on your
15 front porch, could you see Tory's house from where you
16 would be standing?
- 17 A. No.
- 18 Q. Okay. At any point either in your front yard or your
19 backyard, would you be able to see Tory York's house
20 from that position, from the front or back of your
21 house?
- 22 A. No, I have to walk out to the road to see his house.
- 23 Q. Okay. All right.
- 24 A. Where I was living.
- 25 Q. Where you were living at, I understand.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 All right. Now, sir, I'm going to take you back
2 to the night that Tory York was killed, okay?
- 3 A. Uh-huh.
- 4 Q. You remember that day?
- 5 A. Yeah.
- 6 Q. Okay. All right. Did you hear the shots being fired
7 when Mr. York was killed?
- 8 A. Yeah, I heard the shots.
- 9 Q. You heard the shots?
- 10 A. Yeah.
- 11 Q. All right. Now, prior to the shots being fired, did
12 you, actually, see Tory?
- 13 A. Yeah.
- 14 Q. Okay.
- 15 A. I was talking to him.
- 16 Q. You were talking to him?
- 17 A. Yeah.
- 18 Q. Okay. All right. In terms of minutes?
- 19 A. Uh-huh.
- 20 Q. How much time had passed by between the time you spoke
21 to him --
- 22 A. Uh-huh.
- 23 Q. -- and the time you heard the shots being fired?
- 24 A. About 10 seconds.
- 25 Q. Okay. All right. Now, did you ever see anyone else in

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 his yard before he was shot?
- 2 A. Me and another fellow, I don't know him.
- 3 Q. You and another fellow?
- 4 A. Yeah.
- 5 Q. Okay. All right. Do you know whether or not he had
- 6 anybody to come to his house that night before he was
- 7 shot?
- 8 A. No. I don't remember.
- 9 Q. All right. Did you ever see Tory talking to anybody in
- 10 his front yard that night?
- 11 A. Yeah, the dude was talking to him and I walked to get
- 12 my lighter. I don't know him, a tall dude with gold
- 13 teeth.
- 14 Q. All right. Now, you spoke real fast?
- 15 A. Uh-huh.
- 16 Q. You said when you went to do what now?
- 17 A. To get my cigarette lighter.
- 18 Q. When you went to go get your cigarette lighter?
- 19 A. Yeah, from Tory.
- 20 Q. Okay. You went to go get a cigarette lighter from
- 21 Tory?
- 22 A. Yeah.
- 23 Q. Okay. Where was Tory physically when you went to go
- 24 get the cigarette lighter?
- 25 A. Standing on his front porch.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 Q. On his front porch, okay.
- 2 A. Yeah.
- 3 Q. Did he give you the cigarette lighter?
- 4 A. Yeah.
- 5 Q. And then what did you do after you got the cigarette
- 6 lighter, did you go back home or did you stay there?
- 7 A. Yeah, I walked and went back home.
- 8 Q. Okay. All right. How much time passed between the
- 9 time that you got the cigarette lighter and when you
- 10 saw Tory talking to a tall guy?
- 11 A. The guy was out there -- when I went to get my lighter,
- 12 the guy was standing out there with Tory. When I went
- 13 to get my lighter, the guy was coming around the car
- 14 during the same time.
- 15 Q. Okay.
- 16 A. When I was coming to get my lighter, the car was
- 17 pulling up in the yard.
- 18 Q. I see. Okay. All right. So when you're having a
- 19 conversation with Tory on his front porch, you see the
- 20 vehicle come up --
- 21 A. Yeah.
- 22 Q. -- in the yard?
- 23 A. Yeah.
- 24 Q. Do you remember anything about the vehicle?
- 25 A. All I know is kind of a four-door car.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 Q. Okay.
- 2 A. With white interior.
- 3 Q. Okay. Do you remember what the exterior of the car
- 4 was, whether it was a dark color or light color?
- 5 A. Seems like blue or green.
- 6 Q. Okay. All right. Now, do you -- do you remember
- 7 whether or not there were any people inside the
- 8 vehicle?
- 9 A. Yeah, there was two gentlemen inside the vehicle.
- 10 Q. Okay. Do you -- were you able to see anything about
- 11 them in terms of their physical appearance?
- 12 A. No, they never got out.
- 13 Q. Okay. All right. Do you know whether or not they were
- 14 white or black?
- 15 A. Black.
- 16 Q. Okay. All right. Now, you said there were two people
- 17 inside the vehicle?
- 18 A. Yeah.
- 19 Q. And you mentioned a third person that was standing up
- 20 talking with Tory?
- 21 A. Yeah, he was on the passenger side. He got out and
- 22 walked around the back of the car.
- 23 Q. Okay.
- 24 A. And he was talking to Tory.
- 25 Q. Talking to Tory?

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 A. When I went to get my lighter.
- 2 Q. All right. Describe that individual again for me?
- 3 A. He was kind of tall with dreads with gold teeth.
- 4 Q. Tall with dreads and gold teeth?
- 5 A. Yeah.
- 6 Q. Okay. And then tell me -- as you're walking off, tell
- 7 me what happens at that point?
- 8 A. I got my lighter and I walk off, I'd say about 10
- 9 seconds, 10 to 15 seconds, I hear pow, pow, pow. And I
- 10 took off and started running.
- 11 Q. Okay. When you heard the words pow, pow, pow, did you
- 12 look to see where that came from?
- 13 A. No.
- 14 Q. Okay.
- 15 A. It was so close, I ain't look back.
- 16 Q. You did not look back?
- 17 A. Huh-uh.
- 18 Q. So you don't -- so you don't know who, actually, fired
- 19 the gun?
- 20 A. No, I didn't see no gun.
- 21 Q. Okay. All right. Where did you take off running to?
- 22 A. Back on the -- back around my house.
- 23 Q. Okay.
- 24 A. Back around my house and I looked around the house and
- 25 I seen the car pull off.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 Q. Okay.
- 2 A. When I look around the house, I see the car pull off
3 and I said I know the police coming, so I'm going back
4 inside.
- 5 Q. Okay.
- 6 A. So on my way back inside, I hear Bay, that's my
7 nickname Bay.
- 8 Q. Your nickname is what?
- 9 A. Bay, B-A-Y.
- 10 Q. B-A-Y?
- 11 A. Yeah.
- 12 Q. Bay?
- 13 A. Yeah.
- 14 Q. Okay.
- 15 A. So I look up under the tree and I see a white T-shirt
16 and somebody laying up under the tree.
- 17 Q. Okay.
- 18 A. Tory has a white T-shirt, so I went to look and make
19 sure the car been gone and I look over there and I
20 looked for Tory. And I said, Tory, that's you? And he
21 ain't said nothing. I went to him and I said, tory,
22 you been shot? And he nodded his head. He was
23 sweating and blood coming out of his nose and he nodded
24 his head. And -- run to the house to get the phone and
25 call 911 and came back outside.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 Q. Okay. So you're the one who called 911?
- 2 A. Yeah.
- 3 Q. All right. Now, did you remain with Tory until the
- 4 police got there?
- 5 A. Yeah, the ambulance got there.
- 6 Q. Okay. The ambulance was the first to get there?
- 7 A. Yeah.
- 8 Q. Okay. All right. Did Tory say anything else to you
- 9 other than nodding his head in response to your
- 10 question as to whether or not he had been shot?
- 11 A. No.
- 12 Q. Okay.
- 13 A. He just breathing real hard, that's it.
- 14 Q. Okay.
- 15 A. Yeah.
- 16 Q. Could you tell where he was shot at?
- 17 A. No, because he was laying on his stomach and I didn't
- 18 touch him.
- 19 Q. Okay.
- 20 A. -- he must have been crawling.
- 21 Q. Say again?
- 22 A. -- his knees --
- 23 Q. Yes, sir.
- 24 A. -- like he must have been crawling.
- 25 Q. Okay.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 A. Down to the house.
- 2 Q. Okay.
- 3 A. I ain't touch him.
- 4 Q. Okay.
- 5 A. I just told him to hold on, the ambulance is on the
- 6 way.
- 7 Q. All right. Did you talk with law enforcement once they
- 8 arrived?
- 9 A. Yeah.
- 10 Q. Okay. Now, in terms of where you went to Tory -- where
- 11 he was laying on the ground --
- 12 A. Uh-huh.
- 13 Q. -- was it in the front of the yard, his yard or the
- 14 back of his yard?
- 15 A. It was in the back.
- 16 Q. He had --
- 17 A. Matter of fact, it was in back of the house behind his
- 18 house, back behind of their yard.
- 19 Q. All right. So you've got Tory's house?
- 20 A. Yeah. And you got another house back behind his house.
- 21 Q. And another house right behind his house?
- 22 A. Yeah.
- 23 Q. And his body was found where?
- 24 A. Behind his neighbor's house.
- 25 Q. Behind the neighbor behind him?

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 A. Yeah.
- 2 Q. Behind that house?
- 3 A. Uh-huh.
- 4 Q. Okay. All right. When you first heard the shots, let
- 5 me ask you this, did you ever -- did you see Tory leave
- 6 from the front of his house to the back of the
- 7 neighbor's house, did you see him go in that direction?
- 8 A. No. When I left, Tory was on the porch.
- 9 Q. Okay.
- 10 A. -- he was standing there talking to the dude with
- 11 dreads.
- 12 Q. Okay.
- 13 A. Then I walk off. I walk off, I hear pow, pow, pow and
- 14 I took off running.
- 15 Q. Okay. All right. Now, in terms of the conversation
- 16 that Tory was having with the tall guy with the dreads
- 17 and the gold teeth in his mouth, did you hear what they
- 18 were saying?
- 19 A. No, I -- no, you -- talking.
- 20 Q. Okay.
- 21 A. I didn't talk to him -- grill out. I see he stick a
- 22 flashlight right here and I seen he had gold teeth.
- 23 Q. Okay.
- 24 A. I said that's what you mean by grill out.
- 25 Q. Okay.

WILLIE CHANDLER DIRECT BY MS. BARR

- 1 A. I said you finish with the lighter. He said yeah. He
2 gave me the lighter and I walk off. I left them there
3 talking.
- 4 Q. All right. So it did not appear that Tory and the tall
5 individual -- the tall individual with the gold teeth,
6 it didn't appear like they were arguing?
- 7 A. No, I thought they know them. I didn't know them. I
8 thought Tory know them. I thought it was some of his
9 home boys, you know.
- 10 Q. All right. Now, when you spoke to the police once they
11 arrived at the scene --
- 12 A. Uh-huh.
- 13 Q. -- did you tell the police everything that you've just
14 told this jury?
- 15 A. Yeah, the same thing.
- 16 Q. Okay.
- 17 A. Yeah.
- 18 Q. Did you see any bullets or any shell casings or
19 anything in the area of where Tory's body was or
20 anything like that?
- 21 A. No.
- 22 Q. Okay. All right. Now, if -- if we just assume for
23 argument sake --
- 24 A. Uh-huh.
- 25 Q. -- follow with me. If I am Cory -- or Tory's resident,

WILLIE CHANDLER CROSS BY MR. MOSELEY

1 okay?

2 A. Uh-huh.

3 Q. And this would be the front of Tory's residence?

4 A. Yeah.

5 Q. About how close are the houses apart? So, for example,
6 if Tory was standing on his front porch?

7 A. Yeah.

8 Q. And if he reached out his right arm, the house to the
9 right of him, how -- what's the distance between those
10 houses? Are they far apart or close together?

11 A. Yeah, the house be right here.

12 Q. Say it again now.

13 A. There's another house on the side. He couldn't reach
14 it not sticking his hand out.

15 Q. Okay. What about the house on the other side?

16 A. No.

17 Q. Okay.

18 MS. BARR: Beg the Court's indulgence.

19 Thank you, Mr. Chandler, that's all the questions
20 I have. Please answer any questions that the counselor, Mr.
21 Moseley or the Court may have.

22 THE COURT: Mr. Carraway.

23 MR. CARRAWAY: I don't have any questions.

24 THE COURT: Mr. Moseley, any questions?

25 CROSS-EXAMINATION

WILLIE CHANDLER CROSS BY MR. MOSELEY

1 BY THE DEFENDANT::

2 Q. You said before the car pulled up, he was talking to a
3 guy with dreads and gold teeth?

4 THE COURT: Push that button there. There you go.
5 That's good.

6 THE CLERK: Mash it again.

7 THE COURT: All right. There you go. That's good
8 enough.

9 BY THE DEFENDANT:

10 Q. So you saying when Tory was on the porch before the car
11 pulled up, there was a guy with dreads and gold teeth?

12 A. No, the guy get out the car.

13 Q. What was the description of the person on the porch
14 with him?

15 A. Nobody was on the porch with him. He was by hisself.

16 Q. He was by hisself?

17 A. Yeah.

18 Q. Okay. So the only person you saw who got out the car
19 was a guy with --

20 A. Gold teeth and dreads.

21 Q. Gold teeth and dreads?

22 A. Yeah.

23 Q. Would you be able to recognize him?

24 A. No, it was dark, man. It was dark. I see the gold
25 teeth and I know he had the dreads because it was long.

WILLIE CHANDLER REDIRECT BY MS. BARR

- 1 Q. How long was his dreads?
- 2 A. About down to here (indicating).
- 3 Q. So about the shoulder?
- 4 A. Shoulder, yeah, uh-huh.
- 5 Q. Was it possible -- you said it was two people in the
- 6 car?
- 7 A. It was two in the car.
- 8 Q. Two people in the car and one got out of the car?
- 9 A. Yeah. The guy with dreads and the gold teeth is the
- 10 one that got out talking to Tory.
- 11 Q. So what was the description of the other guys?
- 12 A. They didn't look back. I didn't -- they keep their
- 13 head straight. I was behind the car. I didn't see
- 14 their face.
- 15 Q. So it is your testimony with gold teeth and dreadlocks
- 16 shot Mr. York?
- 17 A. I didn't say he shot them.
- 18 Q. That was the last person you saw?
- 19 A. He was talking to him when I left.
- 20 Q. This was about 10 seconds after you left --
- 21 A. Yeah.
- 22 Q. -- he was talking to this guy?
- 23 A. Yeah, uh-huh.
- 24 Q. Gold teeth and dreads?
- 25 A. Yeah.

SHANNON COKER DIRECT BY MS. BARR

1 THE DEFENDANT: That's all, Your Honor.

2 THE COURT: Okay.

3 Redirect?

4 REDIRECT EXAMINATION

5 BY MS. BARR::

6 Q. Mr. Chandler, just to be clear, the number of people
7 who were, actually, either in the car or standing
8 outside the car at the time you got the lighter from
9 Tory --

10 A. Uh-huh.

11 Q. It was a total of two or three altogether?

12 A. It was two in the car and one standing outside the car.

13 Q. So it was a total of three?

14 A. Total of three people out there.

15 Q. Right.

16 A. Only one got out the car.

17 Q. Yes, sir.

18 A. Yeah.

19 Q. That's all the questions I have. Thank you.

20 THE COURT: Anything, Mr. Carraway?

21 MR. CARRAWAY: No.

22 THE COURT: Anything else, Mr. Moseley?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. You can step down. Thank
25 you very much, Mr. Chandler.

SHANNON COKER DIRECT BY MS. BARR

1 All right. Next witness.

2 MS. BARR: We call Investigator Shannon Coker.

3 THEREUPON,

4 SHANNON COKER,

5 after having been duly sworn, testified as follows:

6 THE COURT: Mr. Moseley, you might want to push
7 that mute button again so it will mute any talking y'all
8 have.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: There you go, that's got it.

11 (State's Exhibit No. 1 was marked for
12 identification.)

13 DIRECT EXAMINATION

14 BY MS. BARR:

15 Q. Investigator Shannon, if you would, please, state your
16 full name for us for the record.

17 A. Shannon Coker.

18 Q. And, sir, tell me what's your occupation.

19 A. I am the investigator with Williamsburg County
20 Sheriff's Office.

21 Q. You a certified police officer?

22 A. Yes, ma'am.

23 Q. And how long have you been in law enforcement?

24 A. Twenty years.

25 Q. All right. And how long have you worked the with

SHANNON COKER DIRECT BY MS. BARR

1 sheriff's office?

2 A. Eleven years.

3 Q. All right. And in March of 2001, where were you
4 employed?

5 A. The Kingstree Police Department.

6 Q. And what was your job or your assignment in March of
7 2011?

8 A. I was an investigator.

9 Q. All right. And can you just briefly for a moment kind
10 of tell us what the duties of the investigator are?

11 A. Yes, ma'am. We investigated various crimes, from
12 break-ins to robberies to homicides to kidnappings. At
13 the time, there was three investigators and we would
14 pull a week of call.

15 Q. Okay.

16 A. Between the three of us, we would rotate it.

17 Q. Okay. Now, back on the night of March the 23rd of
18 2001, the night that Mr. York was killed, who was the
19 investigator on all at that time?

20 A. I was.

21 Q. All right. And what time was 911 or the police
22 notified about the shooting?

23 A. They were notified around, I believe, 9:40 -- or 9:50
24 in the afternoon.

25 Q. In the afternoon?

SHANNON COKER DIRECT BY MS. BARR

- 1 A. Yes, ma'am, p.m. at night.
- 2 Q. So at night?
- 3 A. Yes, ma'am.
- 4 Q. So about 10 till 10:00 p.m. is when the 911 call was
- 5 placed?
- 6 A. That's correct.
- 7 Q. All right. And how long did it take for the first
- 8 officer to arrive at the scene?
- 9 A. They arrived at 9:52.
- 10 Q. All right.
- 11 A. Which was three minutes later.
- 12 Q. All right. And in terms of the representative from the
- 13 Kingstree Police Department, what would have been the
- 14 first to get there?
- 15 A. I believe it was between Mike Graham, I think he was
- 16 probably the first one there.
- 17 Q. Okay.
- 18 A. Him or maybe one of the other patrol officers.
- 19 Q. All right. Did you, actually, go out to the scene that
- 20 night?
- 21 A. I did.
- 22 Q. All right. And when you arrived there, was the
- 23 victim's body still there?
- 24 A. No, ma'am.
- 25 Q. Okay. Where was the victim's body?

SHANNON COKER DIRECT BY MS. BARR

1 A. The EMS had already arrived and left with him. They
2 had taken him to Williamsburg Regional Hospital.

3 Q. Okay. And when was it that you all were notified that
4 the victim had passed?

5 A. Shortly after I arrived on the scene, one of the
6 officers called me from the hospital and stated that he
7 had passed away.

8 Q. Do you remember about what time that was?

9 A. Probably -- I don't know exactly what time. I was
10 probably there about 10 minutes.

11 Q. Okay. All right. Now, did you find any evidence that
12 there had been a shooting that night involving the
13 victim, obviously, because he was not there when you
14 arrived at the scene, was there any evidence recovered
15 that suggested to you that there had been a shooting
16 and suggested what type of weapon was, perhaps, used?

17 A. Yes, ma'am.

18 Q. Tell us about that.

19 A. I recovered a bullet out of the residence right beside
20 the victim's residence. The victim, actually, lived at
21 in Kingstree, which is in Williamsburg
22 County --

23 Q. Yes, sir.

24 A. -- City of Kingstree, city limits. The residence
25 beside it -- if you're facing his residence, the

SHANNON COKER DIRECT BY MS. BARR

1 residence on the right-hand side is 905 Thorn Avenue.

2 Q. Okay.

3 A. And there was a bullet recovered from that residence
4 that was a .38 caliber bullet. And it was recovered
5 about 11:30 that night.

6 Q. Okay. All right. So you indicated that the victim
7 lived at

8 A. That's correct.

9 Q. That if you're facing the victim's residence, the
10 bullet that you recovered came from the home right next
11 door at 905?

12 A. Yes, ma'am.

13 Q. Okay. All right. I'm going to hand you what's been
14 marked for identification purposes as State's Exhibit
15 No. 1 and ask you if you recognize what's depicted in
16 that particular exhibit?

17 A. Yes, ma'am.

18 Q. All right. And how is it that you recognize that?

19 A. This is the bullet that was retrieved from 905 Thorn
20 Avenue and the envelop that I placed it in that night.

21 Q. All right. And is there anything that is contained
22 within that exhibit that lets you know that that was
23 the bullet that you removed from the home next door?

24 A. Yes, ma'am. There was a chain of custody on the
25 envelope and it has the evidence tape around it where I

SHANNON COKER DIRECT BY MS. BARR

1 initialed it.

2 Q. Okay. All right. And tell me, when you recovered the
3 bullet from the residence next door to the victim's
4 house, how it is that -- or were you able to determine
5 whether or not that bullet had been freshly fired or
6 that bullet had been there for some period of time?

7 A. No, ma'am. We recovered it and then it was sent to
8 SLED to be examined.

9 Q. Okay. All right. I'm assuming that since it was
10 recovered from the residence there was some damage done
11 to that resident?

12 A. Yes, ma'am, there was damage.

13 Q. Did the damage appear to be fresh or did it appear to
14 be damage that had been there for some time, had some
15 age on it?

16 A. No, ma'am, it appeared it was fresh damage, freshly
17 fired.

18 THE DEFENDANT: Objection, Your Honor, to this
19 coming into evidence.

20 THE COURT: Are you offering it, Ms. Barr?

21 MS. BARR: Yes, sir.

22 THE COURT: Okay. Will there be any other
23 witnesses concerning the exhibit?

24 MS. BARR: Yes.

25 THE COURT: Your objection, Mr. Moseley?

SHANNON COKER DIRECT BY MS. BARR

1 THE DEFENDANT: Yes, sir. I have a matter of law
2 that it the state's clearly right here that --

3 THE COURT: Wait, just --

4 THE DEFENDANT: Oh, okay, sir. It's the same
5 documentation that she showed --

6 THE COURT: All right. Come on up here, please.

7 (Whereupon, a bench conference was held
8 off the record, in the presence of the
9 jury, but out of the hearing of the
10 jury.)

11 THE COURT: All right. I will allow the objection
12 in over Mr. Moseley's objection.

13 Mr. Carraway, do you have an objection?

14 MR. CARRAWAY: None.

15 THE COURT: Number one is in.

16 And we'll put that more clearly on the record
17 later, Mr. Moseley, okay?

18 THE DEFENDANT: Okay.

19 THE COURT: Go ahead, Ms. Barr.

20 (State's Exhibit No. 1 was admitted into
21 evidence.)

22 BY MS. BARR:

23 Q. Now, sir, obviously, you were in court when
24 Mr. Chandler testified. Did you, actually, interview
25 him or did Major or now Chief Graham, Major Mike

SHANNON COKER DIRECT BY MS. BARR

1 Graham, do you know whether or not he interviewed
2 Mr. Chandler on the night that the shooting occurred?

3 A. I think we both talked to Mr. Chandler.

4 Q. And did he at any point in time tell you that he,
5 actually saw the shooting itself?

6 A. No, ma'am.

7 Q. All right. And, sir, initially, did you have any
8 eyewitnesses to the crime?

9 A. No, ma'am.

10 Q. And is it fair to say that it remained unsolved for
11 many, many years?

12 A. Yes, ma'am.

13 Q. All right. Now, on that night or within a year or so
14 after the shooting, did you all have any reason to know
15 or suspect that Corey Liner and Arthur Moseley were
16 involved in the shooting of Tory York?

17 A. No, ma'am.

18 Q. Okay. All right. When did you all receive information
19 implicating Mr. Moseley and Mr. Liner in the shooting
20 death of Tory York?

21 THE COURT: The question is when?

22 MS. BARR: Yes.

23 THE COURT: Just when. Okay.

24 THE WITNESS: Around 2006.

25 BY MS. BARR::

SHANNON COKER DIRECT BY MS. BARR

- 1 Q. Okay. All right. And don't tell me what was said, but
2 from whom or what agency did you receive that
3 information?
- 4 A. Agency Vince Flamini with the FBI.
- 5 Q. Okay. As a result of receiving that information, was a
6 warrant then signed -- well, tell me who the warrants
7 were signed against as a result of receiving the
8 information from Agent Flamini?
- 9 A. Arthur Moseley, Corey Liner and Steve Durant.
- 10 Q. And Mr. Durant has since passed?
- 11 A. Yes, ma'am.
- 12 Q. Okay. In terms of the information that is contained on
13 the arrest warrant for Arthur Moseley, I need you to
14 give me some information as it relates to that, okay?
15 What was the name listed -- his full name listed on the
16 arrest warrant for Arthur Moseley?
- 17 A. Arthur Ranauld Moseley.
- 18 Q. All right. What was his date of birth?
- 19 A. .
- 20 Q. All right. What information did you have about his
21 height and weight?
- 22 A. Six foot one, 171 pounds.
- 23 Q. All right. What about his address at the time?
- 24 A. Lot 15, and that in Florence, South
25 Carolina.

SHANNON COKER DIRECT BY MS. BARR

1 Q. All right. Did you have any contact information from
2 him in terms of family members?

3 (There was no response.)

4 Q. Or do you who his mother was -- is?

5 A. I'm not sure at that time if I knew who his mother was.

6 Q. Okay. Do you know now?

7 A. Yes, ma'am.

8 Q. Do you know now who she is?

9 A. Yes, ma'am.

10 Q. What's her name?

11 A. She is -- her last name is Smith now.

12 Q. Ms. Gloria?

13 A. Gloria, Gloria Moseley Smith.

14 Q. Do you have any idea where she lives, not her specific
15 address, but the portion of the town, county and so
16 forth?

17 A. Yes, ma'am.

18 Q. Where does she live, she is she from?

19 A. She lives in the White Oak community.

20 Q. White Oak community?

21 A. Of Williamsburg County.

22 Q. All right. Now, sir, I'm going to show you portions of
23 Tory York's medical records, just as it relates to the
24 time of death.

25 MS. BARR: Judge, may I approach?

SHANNON COKER DIRECT BY MS. BARR

1 THE COURT: Yes, ma'am.

2 BY MS. BARR:

3 Q. All right. Tell me as it indicates on the death
4 notification when he expired, when he died?

5 A. Yes, ma'am. On March the 23rd, 2001 at 10:38 in the
6 afternoon, which is at night.

7 Q. Okay. So if you all arrived at the scene at 9:50 p.m
8 in less than an hour, he was declared dead at the
9 hospital?

10 A. Yes, ma'am.

11 Q. Now, do the forms that you have as it relates to Mr.
12 Moseley have anything with his social security on it?
13 And if you do, don't tell me what it is, but just tell
14 me whether or not there's any information that contains
15 the social security?

16 A. I don't have nothing with me right now. It might --
17 it's probably on the arrest warrant itself.

18 Q. All right.

19 MS. BARR: Judge, may I approach?

20 THE COURT: Yes, ma'am.

21 BY MS. BARR:

22 Q. And sir, as it relates to this particular document, do
23 you see anything that would tell you what his social
24 security number is?

25 A. Yes, ma'am.

SHANNON COKER DIRECT BY MS. BARR

- 1 Q. What are the last four digits of his social security
2 number?
- 3 A. I need to see it again.
- 4 Q. I'm sorry, I might want to leave it with you.
- 5 A. 2030, 2-0-3-0.
- 6 Q. 2-0-3-0. And the birth date again?
- 7 A. Was 05/22/76.
- 8 Q. And as it relates to Mr. Liner, can you tell me what
9 his birthday is?
- 10 A. January the 23rd, 1977.
- 11 Q. And what address information did you have for him?
- 12 A. Kingstree, and that's in
13 Williamsburg County, also.
- 14 Q. All right. And what about Mr. Steve Durant, what was
15 his birthday?
- 16 A.
- 17 Q. And his address?
- 18 A. in Kingstree in Williamsburg County.
- 19 Q. All right. Now, as it relates to Mr. Liner, in terms
20 of back in 2000, 2001, 2002, have you ever seen him
21 during that period of time?
- 22 A. Yes, ma'am.
- 23 Q. Would you recognize him if you saw a photograph of him?
- 24 A. Yes, ma'am.
- 25 MS. BARR: State's Exhibit No. 2, Your Honor.

SHANNON COKER DIRECT BY MS. BARR

1 THE DEFENDANT: I have an objection.

2 THE COURT: She hasn't offered it, okay?

3 You can ask the witness questions to lay any
4 foundation. If you could, perhaps, repeat the last question
5 we had.

6 (State's Exhibit No. 2 was marked for
7 identification.)

8 BY MS. BARR:

9 Q. Sir, I'm going to hand you --

10 MR. CARRAWAY: Objection, Your Honor. May we
11 approach?

12 THE COURT: Yes, sir. You can come on up, please,
13 Ms. Barr.

14 (Whereupon, a bench conference was held
15 off the record, in the presence of the
16 jury, but out of the hearing of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen,
19 please step to your jury room. You may not discuss the
20 case.

21 (Whereupon, the jury left the courtroom
22 at 1:21 p.m.)

23 THE COURT: All right. Mr. Carraway, you
24 indicated at the bench conference that she's got a picture
25 that she's flashed around?

SHANNON COKER DIRECT BY MS. BARR

1 MR. CARRAWAY: Yes, sir.

2 THE COURT: Okay. What is the substance of it
3 being flashed around?

4 MR. CARRAWAY: Well, she's already walked right
5 along there (indicating) and shown it to him right there
6 (indicating) --

7 THE COURT: No, she --

8 MR. CARAWAY: -- which is five feet from the jury,
9 so he's seen it. She's had it in her hand and walking
10 around with it right along here (indicating). I didn't
11 notice it being hid from anybody here. And it's, clearly, a
12 jail picture there.

13 THE COURT: Okay.

14 Ms. Barr, what is the point you're trying to make
15 with the photograph?

16 MS. BARR: Your Honor, I wanted to, one,
17 corroborate the testimony from Mr. Dozier as to Corey
18 Liner's physical appearance at the time that the murder
19 occurred, which is consistent with what the photograph
20 purports to show and, also, corroborate what the witness saw
21 in terms of the individual having gold teeth and having
22 dreads or braids in his hair.

23 THE COURT: When was this picture taken?

24 MS. BARR: Judge, I don't know the exact time in
25 which it was taken, however, I do know that in August of

SHANNON COKER DIRECT BY MS. BARR

1 2001, Mr. Liner, based on his NCIC, went to the department
2 of corrections August 17th of 2011, which would have been
3 after the murder. And I do know that it is their policy
4 that they shave their heads when they go to SCDC. So it had
5 to have been taken before that date.

6 THE COURT: All right. Now, Mr. Chandler
7 testified that the person he saw talking to Mr -- to the
8 victim, to be clear, had dreads down to his shoulders.

9 MS. BARR: I understand that, Your Honor.

10 THE COURT: Does this picture purport to show
11 that?

12 MS. BARR: The picture does not purport to show an
13 individual with dreads down to his shoulder. And, Judge,
14 one of the things that I was going to ask Investigator Coker
15 about was at the time, and I'm referring to the incident
16 report, Mr. Chandler said that he saw the victim talking
17 with a black male with gold teeth and braids in his hair,
18 which is different from having dreads.

19 THE COURT: Well, he said dreads in the courtroom.

20 MS. BARR: I understand that.

21 MR. CARAWAY: Down to his shoulders.

22 THE COURT: Wait just a second, Mr. Carraway.
23 Who did he tell he had braids, this witness?

24 MS. BARR: He would have told this witness along
25 with Mike Graham.

SHANNON COKER DIRECT BY MS. BARR

1 THE COURT: All right. Why don't you do this, you
2 can ask the witness the questions that you intend to ask.

3 And then Mr. Carraway, I'll hear from you and Mr.
4 Moseley fully. Mr. Moseley has an objection. I don't know
5 what it might be, but we'll hear the objection about the
6 finishes the proffer.

7 MR. CARRAWAY: And no date on the picture and it
8 shows him in a jail uniform.

9 THE COURT: We'll let her proffer, okay, then you
10 can either inquire of the witness or make your objection
11 without any questions.

12 Go ahead, Ms. Barr.

13 BY MS. BARR:

14 Q. Investigator Coker, when you and Mike Graham
15 interviewed Mr. Chandler on the night of the murder,
16 did he give you all a physical description of the
17 individual who was seen talking with the victim moments
18 before the victim was killed?

19 A. Yes, ma'am.

20 Q. All right. And in terms of that description --
21 obviously, you heard him testify in court?

22 A. Yes, ma'am.

23 Q. What description did he give you that night as it
24 relates to the description of the person who was
25 talking with the victim?

SHANNON COKER DIRECT BY MS. BARR

1 A. Yes, ma'am, he said the victim was talking with a black
2 male with gold teeth and braids in his hair.

3 Q. Okay. And I am going to hand you what's been marked
4 for identification purpose as State's Exhibit No. 2.
5 You've indicated that you are familiar with Corey
6 Liner, is that right?

7 A. Yes, ma'am.

8 Q. And, again, we're outside the presence of the jury, but
9 you're familiar with him in your capacity as a police
10 officer?

11 A. Yes, ma'am.

12 Q. All right. And in terms of that particular photograph,
13 based on what you see in that photograph, does it match
14 the description given by Mr. Chandler on the night of
15 the murder?

16 A. Yes, ma'am, it does.

17 THE COURT: Would you ask him when the picture was
18 taken?

19 BY MS. BARR:

20 Q. Do you have any idea of when that particular picture
21 was taken?

22 A. No, I don't.

23 Q. Okay. And, sir, in terms of your experience as a
24 police officer, do you have any knowledge about what the
25 South Carolina Department of Corrections's policy is or

SHANNON COKER CROSS BY MR. CARRAWAY

- 1 practice is if an individual comes in with braids or
2 long hair?
- 3 A. Yes, ma'am.
- 4 Q. What's that policy and practice?
- 5 A. They make them cut them.
- 6 Q. Okay. And, again, sir, we're conducting this
7 in-camera. I'm going to hand you the criminal history
8 of Corey Liner. All right. Sir, does the criminal
9 history reflect Mr. Liner being arrested by Kingstree
10 Police Department on February the 25th of 2001?
- 11 A. Yeah, but, actually, by the Williamsburg County
12 Sheriff's Office.
- 13 Q. I'm sorry. And the date again is?
- 14 A. February the 25th, 2001.
- 15 Q. All right. And so that would have been less than a
16 month before the murder?
- 17 A. That's correct.
- 18 Q. All right. Within the year of 2001, does it also
19 reflect that he was taken to the South Carolina
20 Department of Corrections?
- 21 A. Yes, ma'am.
- 22 Q. Okay. And what's the date he would have been sentenced
23 to the South Carolina Department of Corrections?
- 24 A. His receive date was August the 17th of 2001?
- 25 Q. 2001?

SHANNON COKER CROSS BY MR. MOSELEY

1 A. Yes, ma'am.

2 Q. Let me ask you one more thing about that. At any point
3 in time on his rap sheet, does it also reflect that he
4 again served time in the South Carolina Department of
5 Corrections?

6 A. Yes, ma'am, on October the 23rd, 2003.

7 Q. Okay. He was sentenced to SCDC?

8 A. Yes, ma'am.

9 Q. For what offense?

10 A. For criminal sexual conduct with a minor.

11 Q. Okay. How many years did he receive or does it say?

12 A. I don't see -- yes, it does, five years.

13 THE COURT: Mr. Carraway, first of all, do you
14 have any questions of the witness?

15 MR. CARRAWAY: Yes, I do.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. CARRAWAY::

19 Q. Are you reading from a report?

20 A. Yes, sir.

21 Q. You've described that he told you about the braids?

22 A. Yes, sir. Yes, sir.

23 Q. May I see that?

24 A. Yes, sir.

25 MR. CARRAWAY: Beg the Court's indulgence?

SHANNON COKER CROSS BY MR. MOSELEY

1 THE COURT: Yes, sir.

2 MR. CARAWAY: I don't have any further questions.

3 THE COURT: Mr. Moseley, do you have any questions
4 of the witness about the photograph?

5 THE DEFENDANT: Yes, sir.

6 CROSS-EXAMINATION

7 BY THE DEFENDANT::

8 Q. Did you talk to Mr. Chandler yourself?

9 A. Yes, sir.

10 Q. As soon as the incident occurred?

11 A. Shortly after.

12 Q. And he said braids, right?

13 A. He said a black male with gold teeth and braids in his
14 hair.

15 Q. Did you ask him how long it was?

16 A. No, sir.

17 Q. So, possibly, they was to his shoulder like he just a
18 testified?

19 A. Well, that's not what I think braids are, but.

20 Q. So it's speculation?

21 A. Yes, sir.

22 Q. And assumption?

23 A. All right.

24 THE COURT: All right. Ms. Barr, any follow-up
25 questions for the proffer?

SHANNON COKER CROSS BY MR. MOSELEY

1 MS. BARR: No, Your Honor.

2 THE COURT: Your objection, Mr. Carraway?

3 MR. CARRAWAY: No objection.

4 THE COURT: To the photograph?

5 MR. CARRAWAY: None.

6 THE COURT: Mr. Moseley, do you object to the
7 photograph?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Now, is anybody going to
10 object to his testifying to what Mr. Chandler told him?
11 Just while the jury is out, I just need to know.

12 Mr. Carraway, are you going to -- I'm trying to
13 find out if anybody is going to object to anything else the
14 witness said during this proffer?

15 MR. CARRAWAY: No, sir.

16 THE COURT: Mr. Moseley?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. All right. Now, we don't know
19 when the picture was taken, right?

20 MS. BARR: Correct.

21 THE COURT: And are you going to get the witness
22 to say this it was taken in 2001?

23 MS. BARR: No, sir.

24 THE COURT: Okay.

25 THE DEFENDANT: May I see the picture, sir, for a

SHANNON COKER CROSS BY MR. MOSELEY

1 minute?

2 THE COURT: I wrote ID on the tag, by the way,
3 just to make it clear.

4 MS. BARR: And, Judge, just for the record so that
5 it's clear, there is not a situation where it's obvious to
6 anybody that it's a jail photo. I mean, it's cut off right
7 under his neck.

8 THE COURT: Well, nobody's going to be testifying
9 as to when it was taken.

10 MS. BARR: Yes, sir.

11 THE COURT: I'm not going to permit that unless
12 the actual records show when that picture was taken.

13 MR. CARRAWAY: So you're going to make her cut
14 this picture off.

15 THE COURT: Well, that's what I was going to ask
16 you, do you have any objections to the picture as it is in
17 that exhibit?

18 MR. CARAWAY: Well, I'd like it cut off where you
19 can't see the yellow shirt -- I mean, the orange shirt. I
20 don't know what -- I'm sure I misunderstood when she said
21 there's no way somebody could tell this is a jail picture.
22 That's not what she said. I know I misunderstood her there.
23 I thought she said she was going to cut this off to where
24 you couldn't see the orange shirt.

25 THE COURT: Well, I assume that can be done to

SHANNON COKER CROSS BY MR. MOSELEY

1 remove any possible prejudice. I'm sure somebody's got a
2 paper cutter, but.

3 MR. CARRAWAY: I just -- I know I misunderstood
4 when she said --

5 THE COURT: That's what she said.

6 MR. CARRAWAY: -- nobody could tell that's a jail
7 picture.

8 THE COURT: No, she said there's no way anybody
9 can tell it's a jail picture. You might be facetious, but
10 that's what she said.

11 MR. CARRAWAY: Oh, I thought I was hearing things,
12 I'm sorry.

13 THE COURT: Well, all right. No need to get
14 dramatic.

15 All right. If you can, take off the orange.

16 MS. BARR: And, Judge, while I'm doing that, I,
17 certainly, appreciate everything that Ms. Butcher is doing
18 in terms of accommodating Mr. Moseley, Judge, but it does
19 create somewhat of a difficulty for me because my
20 understanding is that she's standby counsel to assist him if
21 he needs it. And it appears that -- and I know it must be
22 difficult in her situation to be standby counsel, but it
23 appears that she's, actually, telling him the objections to
24 make and the questions to ask and that sort of thing. And
25 so, Judge, if she's going to be his lawyer, I prefer --

SHANNON COKER REDIRECT BY MS. BARR

1 THE COURT: How do you know that?

2 MS. BARR: You can hear her.

3 THE COURT: Well, I -- there may be a fine line
4 somewhere, but I don't see any prejudice to the State from
5 that happening, so I'm going to overrule any objection in
6 that regard.

7 MR. CARRAWAY: That's it. That's good. Let me
8 just see it. I don't want anybody to see an orange shirt.

9 THE DEFENDANT: Your Honor, sir, I would like to
10 present --

11 THE COURT: Wait just a second. I'm not going to
12 be receiving any evidence right now, Ms. Butcher. If you
13 think it's -- excuse me, Mr. Moseley. If you think it's
14 something that needs to be taken up right this second, you
15 can -- we'll do it at a recess, okay? We're out on recess
16 now, but not a recess to take a break.

17 You need some scissors?

18 MS. BARR: Judge, what I would prefer to do,
19 obviously, before it's handed to the jury is just finish
20 cutting out the part that would show any portion of his
21 collar.

22 THE COURT: That's fine.

23 MS. BARR: Yes, sir.

24 THE COURT: She'll do that, Mr. Carraway.

25 MR. CARAWAY: (Mr. Carraway witness nodded head.)

SHANNON COKER REDIRECT BY MS. BARR

1 THE COURT: Don't leave -- don't mess with it now,
2 we're going to bring the jury in now.

3 Anybody in here need to take a break?

4 Okay. Everybody ready to go?

5 MS. BARR: Yes, sir.

6 THE COURT: Mr. Carraway, you ready for the jury?

7 MR. CARRAWAY: We're ready, Your Honor.

8 THE COURT: Mr. Moseley, ready for jury?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Bring them in.

11 (Whereupon, the jury returned to the
12 courtroom at 1:37 p.m.)

13 THE COURT: Okay. Ms. Barr.

14 BY MS. BARR:

15 Q. Investigator Coker, in terms of the timing by which you
16 would have spoken with the witness, Mr. Willie Chandler
17 if we have established that the call came in at 10
18 minutes to 10 p.m, how soon after that call came in
19 would you have, actually, had a conversation with
20 Mr. Chandler?

21 A. Within the hour.

22 Q. Within the hour?

23 A. Yes, sir.

24 Q. All right. And at that time, what information did he
25 give you regarding the description of the individual

SHANNON COKER REDIRECT BY MS. BARR

1 who was seen talking with Mr. York moments before his
2 shooting?

3 A. Yes, ma'am. He said a black male with gold teeth and
4 braids in his hair.

5 Q. And braids?

6 A. Yes, sir.

7 Q. All right. And did he use the word dreads at all
8 within an hour of the shooting?

9 A. No, ma'am.

10 Q. Okay. And I asked you before whether or not you knew
11 Mr. Liner?

12 A. Yes, ma'am.

13 Q. You remember that series of questions?

14 A. Yes, ma'am.

15 Q. All right. And had you ever seen him in terms of just
16 seeing him with him having gold teeth in his month and
17 braids in his hair?

18 A. Yes, ma'am.

19 Q. All right. I'm going to hand you what's been marked
20 for identification purposes State's Exhibit No. 2, who
21 is the individual depicted in the photograph?

22 A. Mr. Corey Liner.

23 Q. All right. And in terms of the person being depicted
24 in that photograph, is that the same individual
25 (indicating) who's seated here next to Mr. Carraway?

SHANNON COKER REDIRECT BY MS. BARR

1 A. Yes, ma'am.

2 Q. What's the difference between how he appears now and
3 how he appears in the photograph?

4 A. He is fairly -- his head is fairly clean shaven, low
5 cut and in the picture here, he's got braids in his
6 hair.

7 Q. All right.

8 MS. BARR: We would move State's Exhibit No. 2
9 into evidence.

10 THE COURT: Mr. Carraway?

11 MR. CARAWAY: Without objection, Your Honor.

12 THE COURT: Mr. Moseley?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Any objection?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Two is in.

17 (State's Exhibit No. 2 was admitted into
18 evidence.)

19 MS. BARR: Move to publish, Your Honor.

20 THE COURT: Yes, ma'am.

21 BY MS. BARR:

22 Q. Investigator Coker, can I get you to come off the stand
23 for a moment, please?

24 THE COURT: Keep your voice up, okay?

25 THE WITNESS: Yes, sir.

SHANNON COKER CROSS BY MR. CARRAWAY

1 THE COURT: And make sure that everybody is in a
2 place where the jury can see.

3 Mr. Moseley, you can stand or -- why don't you get
4 in that chair, Mr. Moseley, so you can see and Mr. Liner and
5 Mr. Carraway can see, too.

6 All right. That's good.

7 Everybody see on the jury?

8 Jurors nodded their heads.)

9 THE COURT: Go ahead.

10 BY MS. BARR:

11 Q. Investigator Coker, can you tell me where it is
12 depicted in State's Exhibit No. 2 where Mr. Liner has
13 gold teeth?

14 A. Yes, ma'am, right here (indicating).

15 Q. All right. And what about the braids in the hair?

16 A. Yes, ma'am, right up here (indicating) all over his
17 head.

18 Q. All right. Thank you, sir. You can have a seat.

19 A. Yes, ma'am.

20 MS. BARR: Investigator Coker, thank you so much.
21 Please answer any questions the defendant, counsel or Court
22 may have.

23 THE WITNESS: Yes.

24 THE COURT: Mr. Carraway?

25 CROSS-EXAMINATION

SHANNON COKER CROSS BY MR. CARRAWAY

1 BY MR. CARRAWAY::

2 Q. You had learned that the victim had robbed a safe --

3 MS. BARR: Objection, Your Honor. That is
4 hearsay, one. Counsel knows that's an improper question.

5 THE COURT: Mr --

6 MR. CARRAWAY: I don't know it's an improper
7 question and it's -- I just ask him if he knew he had done
8 that.

9 THE COURT: Relevance --

10 All right. Ladies and gentlemen, please step to
11 your jury room. You may not discuss the case.

12 (Whereupon, the jury left the courtroom
13 at 1:43 p.m.)

14 THE COURT: All right. Ms. Barr, your objection
15 again?

16 MS. BARR: Judge, my objection would be that it's
17 hearsay because the question being asked the witness will
18 require him to give a response based on what somebody else
19 told Mr. Flamini, so that with be my objection. Also, Your
20 Honor, given that the State is not required to prove motive
21 as an element of the offense of murder, then we'd also
22 object to relevance.

23 THE COURT: Mr. Carraway, why is it not hearsay?

24 MR. CARRAWAY: I can show the motive that someone
25 else had done this.

SHANNON COKER CROSS BY MR. CARRAWAY

1 THE COURT: No, stick to the question, why is it
2 relevant to this jury to know if the safe was stolen?

3 MR. CARRAWAY: I'm not offering this for the truth
4 asserted, but that he heard that on the street that the
5 victim had stolen a safe from David Brockington?

6 THE COURT: How is that now hearsay? He heard it
7 on the street.

8 MR. CARRAWAY: It's not put forth to prove the
9 truth of the matter.

10 THE COURT: That it was stolen?

11 MR. CARRAWAY: But that was on the street that
12 people thought that he had done that.

13 THE COURT: And how is that relevant?

14 MR. CARRAWAY: That's relevant because that is a
15 motive for why he was killed a day later.

16 THE COURT: Okay. And how is that relevant to how
17 somebody else may have done it?

18 MR. CARRAWAY: Because it was someone else that
19 was robbed. David Brockington was who was robbed.

20 THE COURT: Well, you're going in a circle. It's
21 offered to prove the truth of the mater asserted that it was
22 a stolen safe, correct?

23 MR. CARRAWAY: Yeah, that David Brockington
24 believed that he had stolen a safe from him and stolen --
25 and drugs and cash were in this safe.

SHANNON COKER CROSS BY MR. CARRAWAY

1 THE COURT: And where is your evidence through
2 this witness that David Brockington believed that?

3 MR. CARRAWAY: Well, for him to testify that there
4 was word on the street about that.

5 THE COURT: All right. Go ahead and ask him the
6 question.

7 BY MR. CARRAWAY::

8 Q. Were you familiar at that time with word on the street
9 or whatever that Tory York had stolen a safe from David
10 Brockington? Had you heard that at that time?

11 A. At which time?

12 Q. Back in 2001?

13 A. Yeah, later on as we did the investigation, we heard
14 that.

15 Q. Okay. It was not -- you heard this before independent
16 of Vincent Flamini's report, is that not right?

17 (There was no response.)

18 Q. You didn't hear this four or five years later when this
19 report came up --

20 A. No, sir. No, sir.

21 Q. -- when the FBI --

22 A. No, sir.

23 Q. You heard it before then?

24 A. Yes, sir.

25 Q. It is correct that at some time in about -- about five

SHANNON COKER CROSS BY MR. CARRAWAY

1 years later, Lonnie Dozier said that he had some
2 information and he wanted to talk to an FBI agent, that
3 was years later, right?

4 A. Yes, sir, that was 2006.

5 Q. This Flamini report and everything came up much later?
6 That's when you learned about Corey Liner, Lonnie
7 Dozier and Arthur Moseley was six years later?

8 A. Yes, sir.

9 Q. But you had heard shortly thereafter in 2001 about the
10 safe and all, is that right?

11 A. Yes, sir.

12 Q. And about the fact that the victim, Tory York, had
13 stolen the safe full of drugs and money from David
14 Brockington?

15 A. Yes, sir.

16 Q. Okay. All right.

17 THE COURT: All right. Again, what does this tend
18 to establish, Mr. Carraway?

19 MR. CARRAWAY: That others had a motive -- there
20 were other motives involved in the killing of Tory York.

21 THE COURT: And the fact that it was stolen by the
22 victim, what is the relevance of the fact that it was
23 stolen? Why not just that he had a safe in his house? Are
24 you trying to prove that Mr. Brockington did it?

25 MR. CARRAWAY: Well, someone -- someone did it.

SHANNON COKER CROSS BY MR. CARRAWAY

1 Someone -- others had a motive for this or whatever. Their
2 whole theory of the case here is this, is that people had
3 heard that the victim had stolen this safe and there was a
4 lot of money and drugs in it. And Flamini even states in
5 here that that was the motive for this is that somebody went
6 to rob him of what he stole out of that safe.

7 THE COURT: That's what Mr. Dozier said.

8 MR. CARRAWAY: Yes.

9 THE COURT: Mr. Dozier said that they went over
10 there to rob him because they had heard he had stolen from
11 Mr. Brockington.

12 MR. CARRAWAY: Stolen from Mr. Brockington.

13 THE COURT: Okay.

14 MR. CARRAWAY: That's right. And I wanted to ask
15 him the same thing, if that's what he had heard.

16 THE COURT: All right. But the witness said he
17 heard after the shooting, after the shooting.

18 MR. CARRAWAY: Yeah.

19 THE COURT: That Mr. Brockington's safe had been
20 stolen by the victim.

21 MR. CARRAWAY: That's right, that was the word
22 out. He didn't know that, but that's what he had heard.

23 THE COURT: Mr. Moseley, what's your position on
24 all this?

25 THE DEFENDANT: Yes, sir.

SHANNON COKER CROSS BY MR. CARRAWAY

1 THE COURT: First of all, do you have any
2 questions of the witness?

3 THE DEFENDANT: Yes, sir. I would like to lead in
4 with him pertaining to that because Mr. Flamini also before
5 the deal with Mr. Dozier, Mr. Wakonda Cooper and Todd Fulton
6 was with Mr. Brockington, who's deceased, and they paid
7 Steve Singletary them to do it. And the document states
8 before the proffer deal with Mr. Dozier those were the
9 people that the FBI was looking at, sir.

10 THE COURT: Yes, sir.

11 MR. CARRAWAY: So I agree with him.

12 THE COURT: You agree with Mr. Carraway.

13 All right. Ms. Barr, anything else?

14 MS. BARR: Yes, sir, the only thing that I would
15 add is that if Mr. Carraway's intent in asking the question
16 is to show that there were other people who had a motive to
17 kill the victim, that absolutely goes to the issue about
18 hearsay -- about the statements being offered for the truth
19 of the matter asserted, so it's classic hearsay. It came in
20 through Mr. Dozier because it was part of the conspiracy
21 that he purported to have heard Mr. Arthur Moseley, Steve
22 Durant and Corey Liner engaging, which was right before the
23 killing.

24 THE COURT: So it's already in evidence that these
25 -- that it was knowledge to some that the safe had been

SHANNON COKER CROSS BY MR. CARRAWAY

1 stolen by the victim?

2 MS. BARR: That there was a belief by the
3 conspirators that the victim stole drug or stole a safe from
4 David Brockington, that's already in evidence.

5 THE COURT: And Mr. Carraway wants to take it one
6 step further that it was more or less common community
7 knowledge, that's what he wants to do?

8 MS. BARR: Correct.

9 THE COURT: All right. And your objection is
10 hearsay and relevance?

11 MS. BARR: Absolutely, Your Honor.

12 THE COURT: All right. Here's what we're going to
13 do. Nobody in the courtroom has taken a break in the last
14 hour and 50 minutes, so we're going to stop now for about
15 five minutes just to take a break.

16 Investigator Coker, you can step down, but you may
17 not discuss this case in any way at all with any of the --
18 anybody in the world, okay?

19 THE WITNESS: Okay.

20 THE COURT: Bring in the juror.

21 Ms. Kelly, where were you today at noon?

22 PROSPECTIVE JUROR: I was at my sister's house.

23 THE COURT: Ma'am?

24 PROSPECTIVE JUROR: I was at my sister's house.

25 THE COURT: And why were you not here at noon?

SHANNON COKER CROSS BY MR. CARRAWAY

1 PROSPECTIVE JUROR: Sir?

2 THE COURT: Why were you not here at noon.

3 PROSPECTIVE JUROR: Because when I listened at the
4 message that was on my answering machine, it said to call
5 back after 12.

6 THE COURT: Ms. Staggers, did it say call back
7 after 12?

8 THE CLERK: It shouldn't have said call back after
9 12, after 10:00 this morning.

10 THE COURT: After 10, okay.

11 Well, everybody else was here --

12 THE CLERK: I talked to her on yesterday.

13 PROSPECTIVE JUROR: No, you didn't, actually, talk
14 to me, ma'am.

15 THE COURT: No, just talk to me.

16 PROSPECTIVE JUROR: Well, sir, she didn't talk to
17 me. She talked to my answering machine.

18 THE COURT: And it said call back after 12?

19 PROSPECTIVE JUROR: Well, the first time, it said
20 call back after 10. And when I called back after 10, it
21 said to call back after 12.

22 THE COURT: You called after 10 this morning?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay. You can have a seat. Thank
25 you.

SHANNON COKER CROSS BY MR. CARRAWAY

1 (Whereupon, a short recess was held.)

2 THE COURT: All right. The State's objection to
3 the --

4 Mr. Carraway's not in.

5 I'll speak to Ms. Kelly.

6 Ms. Kelly, they checked the message again that
7 said to report at 12, that's what the voice mail said. I'm
8 going to have to ask you to stay during the trial. I know
9 you can't be on the jury, but I would like for you just to
10 sit out in the audience on this side, please. I'm just
11 going to have to ask you to stay because you can't be -- the
12 rest of the jury can't be penalized for you not having shown
13 up, okay? You can just sit right out there behind the
14 gentleman in the dark suit.

15 Okay. Mr. Carraway, I'm going to sustain the
16 objection to the question that everybody -- or that you had
17 heard in the community that the safe had been stolen by the
18 victim. I don't know mind you asking the witness if there
19 was a safe that was -- well, no, anything involving the
20 safe -- you can firm up, perhaps, through another witness
21 that everybody in the community knew or that certain people
22 in the community knew if you get those people to say that,
23 but to have this witness testify that he heard that people
24 knew or that he heard that the safe had been stolen is
25 offered to prove exactly what it asserts, that people knew

SHANNON COKER RECROSS BY MR. MOSELEY

1 the safe had been stolen. And I don't see how that's not
2 hearsay. All right.

3 MR. CARRAWAY: All right. I don't have any
4 questions of him.

5 THE COURT: Okay. You ready for the jury, Mr.
6 Carraway?

7 MR. CARRAWAY: Yes, sir.

8 THE COURT: Mr. Moseley, are you ready for the
9 jury?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. You can bring them in.

12 And, Mr. Moseley, any of the questions during the
13 proffer, you may ask again, but based on my ruling a moment
14 ago. The proffer is when the jury was out. You can go over
15 those questions again if you want to.

16 (Whereupon, the jury returned to the
17 courtroom at 2:01 p.m.)

18 THE COURT: All right.

19 Mr. Carraway, any questions?

20 MR. CARAWAY: None.

21 THE COURT: All right.

22 Mr. Moseley?

23 THE DEFENDANT: Yes, sir.

24 RECROSS-EXAMINATION

25

SHANNON COKER RECROSS BY MR. MOSELEY

1 BY THE DEFENDANT:

2 Q. Mr. Coker, isn't it true that from 2001 to 2006, it was
3 alleged other people had done this?

4 A. During the investigation, we had several names that we
5 investigated that come up --

6 Q. Uh-huh.

7 A. -- during the investigation.

8 Q. And isn't it true that it wasn't until Lonnie Dozier's
9 proffer deal that y'all got this information?

10 A. 2006, Mr. Dozier was interviewed by Agent Flamini with
11 the FBI and that's when the names of Arthur Moseley,
12 Corey Liner and Steve Durant came into play.

13 Q. And what was names before that?

14 MS. BARR: Objection as to hearsay, Judge.

15 THE COURT: All right.

16 THE DEFENDANT: You want me to approach?

17 THE COURT: Yes, sir, all of you approach, please.

18 (Whereupon, a bench conference was held
19 off the record, in the presence of the
20 jury, but out of the hearing of the
21 jury.)

22 THE COURT: All right. The objection is
23 sustained.

24 All right. Mr. Moseley, you can continue.

25

VELLO PAAVEL DIRECT BY MS. BARR

1 BY THE DEFENDANT:

2 Q. So -- so let the record show that it was through a
3 proffer deal that y'all got the information from Lonnie
4 Dozier, 2006?

5 MS. BARR: And, Your Honor, I hate to keep
6 objecting --

7 THE COURT: You didn't object to that one. He
8 just can't ask the next one.

9 MS. BARR: Yes. Yes, sir, Judge. Yes, sir.

10 THE COURT: Okay. You can answer that question
11 again and then you will have asked and answered it, so then
12 you'll move on. Investigator Coker, you can answer that.

13 THE WITNESS: Yes, sir.

14 It was during an interview in 2006 that Agent
15 Flamini with the FBI conducted that the names I mentioned
16 earlier, Arthur Moseley, Corey Liner and Steve Durant came
17 up.

18 BY THE DEFENDANT::

19 Q. Do you know what the deal was?

20 A. What do you mean, what deal?

21 Q. What the deal was with arranging of giving the
22 information, what the deal -- what was behind the deal,
23 the proffer deal with Mr. Flamini sitting down giving
24 this information? What was the deal that Lonnie Dozier
25 received?

VELLO PAAVEL DIRECT BY MS. BARR

1 A. Lonnie Dozier was offered immunity on giving that
2 information.

3 Q. Okay. Okay. Did you talk to Mr. Chandler at the time
4 of the incident?

5 A. Yes, sir, shortly after the incident. The night of the
6 murder, I talked to him, yes, I did.

7 Q. Did you ask him how long the dreads was, as he
8 explained they were down to his shoulders?

9 A. No, sir. He advised -- he told me it was a black male
10 with gold teeth and braids in his hair.

11 Q. Uh-huh. But remember he testified that it was down to
12 his shoulders?

13 A. That's what I heard him say in court, yes, I did.

14 (pause.)

15 THE DEFENDANT: That will be all.

16 THE COURT: Ms. Barr, any redirect?

17 MS. BARR: No, Your Honor.

18 THE COURT: All right. You may step down, Mr.

19 Coker.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Next witness.

22 MS. BARR: We call Vello Paavel.

23 VELLO PAAVEL,

24 after having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

VELLO PAAVEL DIRECT BY MS. BARR

1 BY MS. BARR:

2 Q. Mr. Paavel, good afternoon.

3 A. Good afternoon.

4 Q. Would you please state your full name for the record
5 and then spell your first and last name for me?

6 A. Sure. My name is Vello Paavel, spelled V-E-L-L-O,
7 P-A-A-V-E-L.

8 Q. And, sir, back in 2001, where were you employed?

9 A. I was working with SLED, the South Carolina Law
10 Enforcement Division.

11 Q. And that's the office up in Columbia?

12 A. That's correct.

13 Q. Okay. And are you working for them now?

14 A. Yes. I retired in 2010 after 30 years of law
15 enforcement. I went back to work for them last
16 September on a temporary part time basis in the
17 firearms department where I was working before.

18 Q. And in terms of your career in law enforcement, has it
19 always been in the firearms department in SLED?

20 A. No, prior to working at SLED, I worked at the Columbia
21 Police Department for about three years and Richland
22 County Sheriff's Department for about three and a half
23 years. Then in April of '87, I went to work at SLED in
24 the firearms department.

25 Q. All right. And would you give the jury a little bit of

VELLO PAAVEL DIRECT BY MS. BARR

1 information about your educational background, your
2 training and what your responsibilities would have been
3 as a firearms examiner?

4 A. Yes, ma'am. Education-wise, I attended University of
5 South Carolina, got a Bachelor of Science degree. I
6 majored in chemistry. After I finished my school, I
7 did some odd jobs for a while and, ultimately, got into
8 law enforcement, again, at Columbia Police Department,
9 then Richland County, then at SLED. When I went to
10 work at SLED, I was in the firearms department. And at
11 that time, the firearms department also encompassed
12 crime scene work in addition to the firearms work. And
13 I did about two years of crime scene work and some
14 firearm identification work. In May of 1989, I,
15 actually, switched over to straight firearms and tool
16 mark identification.

17 And what that involved was examining firearms and
18 ammunition components in trying to determine whether or
19 not those ammunition components, such as bullets and
20 cartridge cases were fired by a particular firearm. Or
21 in the case of general tool marks, if I had a burglary
22 and somebody had a pry bar or a screwdriver or a
23 hammer, I would try to compare that to the marks that
24 were left at the scene to determine whether that tool
25 was used.

VELLO PAAVEL DIRECT BY MS. BARR

1 Now, during my initial employment, I had to
2 participate in a training program that was administered
3 by the other qualified examiners in the firearms
4 department. I was given tests. I was given practical
5 problems that I had to do and I did supervised case
6 work. I also had the opportunity to attend armor
7 school where I learned more about firearms and how they
8 work. Prior to working in law enforcement for several
9 years, I, actually, worked in the firearms business in
10 Columbia. I work at the Columbia gun exchange where I
11 did gunsmithing work and, also, brought and sold
12 firearms. So I had a fair amount of knowledge in how
13 firearms work when I went to work at SLED.

14 But through that training program, the bulk of my
15 training had to do with examining fired bullets, fired
16 cartridge cases and firearms and determining whether
17 they were fired by a particular firearm or there was
18 some association between these items. And that's done
19 by microscopic comparison of the markings that are left
20 on the bullets or the cartridge case as a result of it
21 being fired by a particular firearm. Also, some
22 examinations that I did and the firearms department
23 does is examined fired bullets and try to determine
24 what type of firearm it could have been fired from.

25 During my training program, I did work supervised

VELLO PAAVEL DIRECT BY MS. BARR

1 cases such as this. After I completed that training
2 program, I was allowed to work cases on my own and
3 testify in court. Since completing that training
4 program, I've testified a little over 300 times as an
5 expert in firearm and/or tool mark identification in
6 South Carolina circuit courts and in federal courts.

7 Q. All right.

8 MS. BARR: Your Honor, at this time, we would
9 tender Mr. Paavel as an expert in the field of firearms and
10 tool mark identification.

11 THE COURT: Any questions or objections, Mr.
12 Carraway?

13 MR. CARAWAY: No objections. No questions.

14 THE COURT: Any questions or objections, Mr.
15 Moseley?

16 THE DEFENDANT: No objection, just one question.

17 THE COURT: All right. It will be about his
18 qualifications in general, not about the specific case yet.

19 THE DEFENDANT: Oh, then no.

20 THE COURT: Now, ladies and gentlemen, this
21 particular witness is qualified as an expert in the field of
22 firearms and tool mark identification.

23 Now, let me explain to you some part of our rules
24 of evidence. Typically, the rules do not permit a witness
25 to give an opinion. Those are -- those witness are called

VELLO PAAVEL DIRECT BY MS. BARR

1 lay witnesses. They can, typically, testify to what they
2 saw or heard or touched or smelled. There is an exception
3 to the rules for someone who is qualified by education,
4 training or experience in any given field. Those witnesses
5 can testify to opinions and they can give the reasons for
6 those opinions. That does not mean, however, that you must
7 accept the testimony of an expert just because it comes from
8 an expert. As I will instruct you later, you give the
9 testimony of an expert the weight that you believe it
10 deserves.

11 All right. Ms. Barr.

12 MS. BARR: Thank you.

13 BY MS. BARR:

14 Q. Mr. Paavel, in terms of your experience with SLED, is
15 it often that the evidence that you all are called upon
16 to examine comes from various law enforcement agencies
17 throughout the state?

18 A. Yes, ma'am. Most of the evidence we receive does come
19 from other agencies. That's one of the things that
20 SLED is responsible for is providing, in this case,
21 scientific or expert services to law enforcement
22 agencies who do not have access to those services.

23 Q. And, sir, I can imagine that if you all are called upon
24 to help all or nearly all of the law enforcement
25 agencies within the State of South Carolina that could

VELLO PAAVEL DIRECT BY MS. BARR

1 create a quite a backlog for you?

2 A. Yes, sir, it can be and there is a tremendous backlog
3 because, again, we're responsible -- except for
4 Richland County has a laboratory right now, Greenville
5 has a laboratory, they handle their own stuff, but
6 we're responsible for the rest of South Carolina.

7 Q. In 2001, did you all receive evidence from the
8 Kingstree Police Department under your SLED lab number
9 0104476 in connection with the death of Tontore York?

10 A. Yes, ma'am, we did.

11 Q. And I'm going to hand you what's been marked as State's
12 Exhibit No. 3 and ask you if that's the evidence that
13 was received by your agency and evaluated by you?

14 (State's Exhibit No. 3 was marked for
15 identification.)

16 THE COURT: You said what number, please?

17 MS. BARR: Number three, Your Honor.

18 THE COURT: Number three?

19 MS. BARR: Yes, sir.

20 THE WITNESS: Bear with me, I haven't seen this in
21 quite a while. I want to make sure I can positively
22 identify it.

23 BY MS. BARR::

24 Q. Yes, sir.

25 A. Yes, ma'am, I recognize this item.

VELLO PAAVEL DIRECT BY MS. BARR

1 Q. All right. And tell the jury how it is that you
2 recognize the item.

3 A. First, I recognize it from the photograph I took at the
4 time, plus, I just looked for my item number and my
5 initials and the SLED laboratory case number that I,
6 actually, placed on this item at the time examination.
7 And those markings are present on here, so this is the
8 projectile that was submitted to SLED for examination
9 and is the one that I examined.

10 Q. All right. May I get you to step off the witness stand
11 for just a moment, please, sir?

12 THE WITNESS: Your Honor, may I?

13 THE COURT: Yes, sir. Just keep your voice up --

14 THE WITNESS: Yes, sir.

15 THE COURT: -- and make sure if you're in front of
16 a projector the jury can see you.

17 THE WITNESS: Yes, sir.

18 BY MS. BARR:

19 Q. All right, sir. May I have that particular exhibit?

20 A. Yes, ma'am.

21 THE COURT: Don't show it until it's been offered
22 and received into evidence.

23 MS. BARR: Judge, I believe it's already been
24 admitted into evidence as State's Exhibit No. 3.

25 THE COURT: No, No. 3 has just been marked for ID.

VELLO PAAVEL DIRECT BY MS. BARR

1 Two has been discussed and one. Let me check my notes.

2 It's just been noted for ID. You're talking about through

3 Investigator Coker?

4 MS. BARR: Yes, sir.

5 THE COURT: You're talking about he testified was

6 retrieved from the house?

7 MS. BARR: Yes, sir.

8 THE COURT: I noted that as No. 1, the one removed

9 from the house. That's the only one identified by Mr.

10 Coker. You might want to check.

11 MS. BARR: Your Honor, I think what may have

12 happened is Madam Court Reporter has indicated State's

13 Exhibit No. 1 was the bullet from 905 Thorn Avenue. No. 2

14 was the photograph of Mr. Liner. No. 3 has been marked as

15 the projectile, which is the same as 1. And my

16 understanding was that was admitted.

17 THE COURT: No. 1 was definitely admitted. If

18 he's going to testify about a bullet allegedly retrieved

19 from the home and we're talking about the same bullet,

20 that's fine.

21 MS. BARR: Yes, Your Honor. We are. We are.

22 THE COURT: Well, where is No. 1?

23 MS. BARR: It's contained within this particular

24 envelope, but it has No. 3 on there and it just should be

25 No. 1.

VELLO PAAVEL DIRECT BY MS. BARR

1 THE COURT: Okay. Check with Mr. Coker and make
2 sure that's the same bullet. Where is No. 1?

3 MS. BARR: It's the bigger envelope that had this
4 in there.

5 THE COURT: So No. 3 was inside No. 1?

6 MS. BARR: Yes, sir.

7 THE COURT: Okay.

8 MS. BARR: And, Judge --

9 THE COURT: If we're talking about the same thing,
10 we're talking about the same thing. If you would just
11 clarify that with the witness with the envelope just to make
12 sure the record is clear. Other than that, you can
13 continue.

14 Any objection, Mr. Carraway?

15 MR. CARRAWAY: I don't have any objection with any
16 of this. It's all fine.

17 THE COURT: Okay. All right.

18 Mr. Moseley, do you have any objection to anything
19 we've done so far?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right.

22 Go ahead, Ms. Barr.

23 BY MS. BARR::

24 Q. Mr. Paavel, inasmuch as the bullet as come out of what
25 has a mark on it as State's identification marked

VELLO PAAVEL DIRECT BY MS. BARR

1 State's No. 3, can you tell us whether or not that
2 would have been the same evidence that came out of
3 what's been marked as State's Exhibit No. 1?

4 A. Yes, ma'am. In essence, when the evidence is admitted,
5 we have an inside envelope, this is the outer envelope.
6 This large -- or smaller envelope that's inside this
7 envelope and the bullet was inside that. I, actually,
8 placed the bullet inside the ziplock so that nothing
9 would rub against the inside of the envelope. I didn't
10 want to damage it anymore, so I put a ziplock bag in
11 here, which has my markings on it, also.

12 So, in essence, what would happen is you would
13 have the bullet inside the small envelope, which is now
14 marked State's 3, and it was inside this larger
15 envelope, which is marked State's 1.

16 MS. BARR: Your Honor, with the Court's
17 permission, may I, actually, have the projectile marked as
18 State's 1A?

19 THE COURT: So what's going to become as No. 3?

20 MS. BARR: We would just -- well, I suppose we
21 could do it either way, just leave this as 3.

22 THE COURT: 3 is the actual envelope?

23 MS. BARR: Yes, sir.

24 THE COURT: But you want to mark the bullet?

25 MS. BARR: Yes.

VELLO PAAVEL DIRECT BY MS. BARR

1 THE COURT: You can put whatever number you want
2 to on there as long as the court reporter is the one that
3 marks it.

4 MS. BARR: Request the Court's permission to admit
5 Exhibit 1A?

6 THE COURT: Any objection?

7 MR. CARRAWAY: None.

8 THE COURT: Mr. Moseley?

9 THE DEFENDANT: No.

10 THE COURT: All right. 1A is in. 1A is the
11 actual bullet. 3 is the envelope from which it came and 1
12 is the envelope from which both came.

13 (State's Exhibit No. 1A was admitted
14 into evidence.)

15 BY MS. BARR:

16 Q. Agent Paavel, I'm going to publish the actual bullet
17 that you're referencing. Agent Paavel, if you can,
18 explain to the ladies and gentlemen of the jury -- make
19 sure you don't block their view -- how it is that you
20 go about your examination when you get a bullet
21 relative to a crime.

22 A. In cases where we receive just a fired bullet -- and,
23 again, the bullet -- let's get the terminology
24 straight. The bullet, when I'm talking about a bullet
25 is a projectile. That's the part that comes out the

VELLO PAAVEL DIRECT BY MS. BARR

1 end of the barrel and goes and hits the target. A lot
2 of people call the full piece of ammunition the bullet.
3 I normally call that a cartridge. So this is something
4 that would come out the end of the barrel.

5 When I receive something like this for
6 examination, what I try to do is determine several
7 things. First of all, what caliber is it? And by
8 caliber, how big around is this projectile. And what
9 type of cartridge could it have come from? Now, the
10 way I do that is measure its diameter. And what I
11 would do is measure from, roughly, here to here where
12 it's the least amount of damage. And based on that
13 diameter, that gives me an idea of what caliber firearm
14 it could have been fired from and, also, what caliber
15 cartridge. Also, looking at the weight of the
16 projectile because if it's too light or too heavy for a
17 particular caliber, it may not be that caliber. Also,
18 looking for any other signs of manufactures markings in
19 the construction of the bullet, which will give me an
20 idea of what caliber the particular bullet was.

21 In this case, this is a lead alloy bullet. It
22 could not have an external jacket or a copper coating
23 on it, just a plain lead or lead alloy bullet.

24 The next thing I look for is any sort of marks
25 that were left on the bullet as a result of the bullet

VELLO PAAVEL DIRECT BY MS. BARR

1 going through the gun barrel. The firearm barrel, the
2 gun barrel is rifled on the inside usually in the case
3 of handgun or rifle cartridges. And when the bullet
4 goes through that barrel, the rifling, actually, marks
5 or engraves the outside of that bullet. And I can use
6 those markings to determine, possibly, what type of
7 firearm the bullet was fired from based on what's known
8 as the general rifling characteristics. Manufactures
9 put certain types of rifling in the firearm that they
10 make. I can, actually, look at the type of rifling
11 that's there, measure the dimensions of the rifling,
12 the direction of twist and by using an FBI program, I
13 can give you an idea of what type of firearm that
14 particular bullet could have been fired from.

15 Unfortunately, in this case, this bullet is so
16 badly damaged, the rifling characteristics are
17 literally gone. The rifling markings are gone, so all
18 I can really do is tell that it is most consistent with
19 being a .38 caliber bullet --

20 THE DEFENDANT: Objection, Your Honor.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: That's speculation. I believe he
23 stated that this bullet wasn't suitable for any
24 identification.

25 THE COURT: All right.

VELLO PAAVEL DIRECT BY MS. BARR

1 THE DEFENDANT: He's speculating it's a .38, sir.

2 THE COURT: You can cross on that. All right.

3 You can continue, Ms. Barr.

4 BY MS. BARR:

5 Q. I'm sorry, Mr. Paavel. Your last statement, please?

6 A. I said there are no marking on this bullet that I can
7 use to tell the general rifling characteristics. In
8 other words, there's no markings on this bullet that I
9 can use to tell the general rifling characteristics nor
10 is this particular bullet suitable for identification
11 with a specific firearm.

12 Q. It's not suitable for identification with a specific
13 firearm?

14 A. That's correct.

15 Q. All right.

16 A. However, there's enough information on this particular
17 bullet that I can tell you it is most consistent with
18 being a .38 caliber bullet.

19 Q. All right. And I'm going to acknowledge my ignorance
20 of firearms to you now. Is it possible and likely even
21 based upon your professional experience that a .38
22 caliber bullet would have been fired from a .38 caliber
23 firearm?

24 A. Typically, a .38 bullet such as this would be fired
25 from a firearm such as a 38 Special caliber, 357 Magnum

VELLO PAAVEL DIRECT BY MS. BARR

1 caliber or other potential calibers that have the same
2 approximate diameter of barrel.

3 Q. Okay. Now, you indicated that there were -- because of
4 the damage that was done to the firearm, there were
5 certain things that you were limited in terms of your
6 ability to identify in terms of the type of firearm it
7 came from. What was it about the bullet that you saw
8 on your visual inspection that resulted in it being so
9 damaged?

10 A. Well, in looking at the projectile, there's drywall,
11 looks like drywall or paint on here. There's wood
12 fiber, I believe, on the other side of the bullet.

13 Q. Let me turn it over.

14 A. That one is just totally damaged. All markings are
15 scuffed off. The material that's on here -- let me
16 back up a second. Whatever this bullet was fired into
17 was abrasive enough to literally rub off all the
18 rifling markings that were there. This is something
19 that I commonly see if a bullet's been shot into wood
20 or drywall or any sort of material like that.

21 Q. Okay. Now, in terms of how the bullet is right now as
22 it sits on the projector screen, is that how it was
23 when it came to you or did you clean it in any way as
24 part of your examination?

25 A. Most of the material that's sitting on here was on the

VELLO PAAVEL CROSS BY MR. MOSELEY

- 1 bullet. A small amount of material may have fallen
2 off. What I did with this particular bullet was just
3 rinse it off with alcohol just to disinfect it while
4 I'm handling it.
- 5 Q. Okay.
- 6 A. But I didn't take any material off of it.
- 7 Q. Okay. Yes, sir. All right. Thank you, sir. You can
8 take your seat.
- 9 A. (Witness returns to seat.)
- 10 Q. Now, sir, apart from rendering -- well, did you render
11 a report as a result of your inspections and your
12 findings?
- 13 A. Yes, ma'am, I did.
- 14 Q. All right. And as a part of rendering a report and
15 finding, other than rendering an opinion that the
16 bullet was most consistent with being a .38 caliber
17 bullet, did you provide any other assistance to law
18 enforcement in connection with this case?
- 19 A. Other than examining this particular bullet that was
20 submitted in this particular case, no.
- 21 Q. Okay. And, of course, Kingstree Police Department
22 never submitted a firearm to you that you would have
23 had an opportunity to try and attempt to match to that
24 particular gun?
- 25 A. On this --

VELLO PAAVEL CROSS BY MR. MOSELEY

1 Q. On this particular case?

2 A. On this particular case?

3 Q. Yes, sir.

4 A. No, ma'am.

5 Q. Okay.

6 MS. BARR: Thank you, sir. That's all the
7 questions I have. Please answer any other questions.

8 THE COURT: Mr. Carraway?

9 MR. CARRAWAY: I have no questions.

10 THE COURT: Mr. Moseley?

11 THE DEFENDANT: Yes.

12 CROSS-EXAMINATION

13 BY THE DEFENDANT:

14 Q. Can you explain if you have any knowledge of how the
15 bullet got in the house?

16 A. Do I have any knowledge of how the bullet got in the
17 house?

18 Q. Yes, sir.

19 A. I have no personal knowledge. I wasn't there when it
20 was fired and I wasn't there when it was retrieved, so
21 I don't know how it got in there or when it got in
22 there. I'm assuming it was fired into the house based
23 on the condition of the bullet.

24 Q. So you don't know how long it was in the house?

25 A. No, sir, I don't.

VELLO PAAVEL CROSS BY MR. MOSELEY

1 Q. Know what direction it come from, inside or out?

2 A. No, sir, I don't know. Again, I never went to the
3 scene. I don't have that information, no, sir.

4 Q. So you said that there's several guns this could have
5 came from, several guns could have fired this
6 particular bullet?

7 A. There was only one firearm that fired it --

8 Q. Yeah.

9 A. -- but there are several different brands, potentially,
10 that could have fired it.

11 Q. What are those brands, sir?

12 A. Well, I don't have a list because there's so many of
13 them. I don't prepare a list because I don't have the
14 rifling characteristics. Because I could not determine
15 the rifling characteristics, I cannot provide a list of
16 firearms that could have fired it. Again, reveal Chris.

17 Q. Okay.

18 A. Again, generally, any .38 caliber revolver, any 357
19 Magnum caliber revolver are likely candidates, maybe
20 others, potentially.

21 Q. So you don't know that it was definitely a .38 that
22 fired this gun?

23 A. Well, it has to be a .38 in the general characteristic
24 as a matter of general class. It wasn't a .41 caliber
25 or a .40 or a .22. It's some kind of .38, which means

DEMETRIC MACK DIRECT BY MS. BARR

1 .38 Special, 357 Magnum, .38 long -- .38 Smith &
2 Wesson. There's a whole myriad of calibers,
3 potentially, that could have done it.

4 Q. So are you sure this is the bullet that came out the
5 victim's body?

6 A. I don't know, sir.

7 THE DEFENDANT: No further questions.

8 THE COURT: Redirect, Ms. Barr?

9 MS. BARR: No, Your Honor. We ask that the
10 witness be excused.

11 THE COURT: Any objection, Mr. Carraway?

12 MR. CARRAWAY: None.

13 COURT: Mr. Moseley, any objection to the witness
14 being excused?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Thank you, sir.

17 THE WITNESS: Yes, sir, appreciate it.

18 THE COURT: Everybody okay on the jury.

19 (Jurors nodded heads.)

20 MS. BARR: The State calls Demetric Mack.

21 THE COURT: All right. Y'all come on up.

22 (Whereupon, a bench conference was held
23 off the record, in the presence of the
24 jury, but out of the hearing of the
25 jury.)

DEMETRIC MACK DIRECT BY MS. BARR

1 THE COURT: Okay. Come on around, Mr. Mack.

2 THE CLERK: Place your left on the Bible raise

3 your right hand.

4 THEREUPON,

5 DEMETRIC MACK,

6 after having been duly sworn, testified as follows:

7 THE CLERK: Okay. Have a seat in the witness box

8 (indicating).

9 DIRECT EXAMINATION

10 BY MS. BARR:

11 Q. Mr. Mack, state your full name for the record, please.

12 A. Barrett Demtric Jeremiah Mack.

13 Q. And, sir, you're a resident of Williamsburg County?

14 A. Yes, ma'am.

15 Q. And how old are you?

16 A. Thirty-three.

17 Q. All right.

18 THE COURT: How do you spell your first name, sir?

19 THE WITNESS: B-A-R-R-E-T-T.

20 THE COURT: And your middle name?

21 THE WITNESS: D-E-M-T-R-I-C.

22 THE COURT: Okay.

23 BY MS. BARR:

24 Q. All right. And, Mr. Mack, do you know the Defendant,

25 Corey Liner?

DEMETRIC MACK DIRECT BY MS. BARR

1 A. Yes, sir.

2 Q. All right.

3 THE DEFENDANT: Objection, Your Honor. Matter of
4 law, sir. I never got this statement.

5 THE COURT: Wait just a second. The rule is that
6 you get it right when the witness begins questioning.

7 THE DEFENDANT: Okay.

8 THE COURT: All right.

9 Mr. Carraway, do you have any objection?

10 MR. CARRAWAY: I have no objection.

11 THE COURT: All right.

12 BY MS. BARR::

13 Q. All right. And, Mr. Mack, can you see Mr. Liner here?

14 A. Yes, ma'am.

15 Q. And do you know the Defendant Arthur Moseley?

16 A. Yes, ma'am.

17 Q. All right. Tell me, how long have you known Corey
18 Liner?

19 A. All my life.

20 Q. All right. Is he related to you?

21 A. Yes, ma'am.

22 Q. Okay. How is he related to you?

23 A. My cousin.

24 Q. Okay. And what about Arthur Moseley, how long have you
25 known him?

DEMETRIC MACK DIRECT BY MS. BARR

- 1 A. All my life. We grew up together.
- 2 Q. Y'all grew up together?
- 3 A. Yes, ma'am.
- 4 Q. All right. Where is he from, Arthur Moseley?
- 5 A. He's originally from Philadelphia.
- 6 Q. Okay. Where did he grow up and go to school and that
- 7 sort of thing?
- 8 A. Williamsburg High and he lived in the White Oak
- 9 community.
- 10 Q. All right. Are you familiar with his parents or his
- 11 mom?
- 12 A. Ms. Gloria.
- 13 Q. All right. Does Ms. Gloria, Arthur Moseley's mother,
- 14 have a nickname?
- 15 A. Ms. Glow.
- 16 Q. They call her Ms. Glow?
- 17 A. Yes, ma'am.
- 18 Q. Okay. All right. Have you ever been to Arthur
- 19 Moseley's home in the White Oak community before?
- 20 A. Yes, I have.
- 21 Q. How many times?
- 22 A. Well, when we were young, we used to go over there and
- 23 chill with him and his brother.
- 24 Q. Okay. All right. Now, in terms of the relationship
- 25 between Arthur Moseley and Corey Liner, would you --

DEMETRIC MACK DIRECT BY MS. BARR

1 how would you describe their relationship?

2 A. All of us was friends growing up.

3 Q. Okay. All right. Now, sir, back in September of 2006,
4 you were incarcerated at the Williamsburg County jail?

5 A. Yes, ma'am.

6 Q. Okay. What were you incarcerated for?

7 A. Attempt -- armed robbery.

8 Q. Okay. What else?

9 A. Burglary first.

10 Q. Okay.

11 A. Kidnapping and possession of a weapon during a violent
12 criminal.

13 Q. Okay. While you were incarcerated in the jail in
14 September of 2006, was the Defendant Arthur Moseley in
15 jail on the murder charge at that time?

16 A. Yes, ma'am.

17 Q. Okay. All right. Now, was there ever any point in
18 time where you and Arthur Moseley had a conversation
19 about your respective charges?

20 A. Yes, ma'am.

21 Q. Tell us -- don't tell us just yet what was said, but
22 how did that conversation come about? Where were you
23 all?

24 A. Well, we was -- we was coming out our cell, I was on C
25 block, he was on A block. We was coming out for

DEMETRIC MACK DIRECT BY MS. BARR

- 1 recreation. And we were coming out for recreation at
2 the same time, we was inside. They was out back in
3 back. And when he saw me, he said, What you in for?
- 4 Q. Who asked that you?
- 5 A. Mr. Moseley.
- 6 Q. Okay.
- 7 A. And I told him what I was locked up for. And then I
8 asked him what were you locked for and he said murder.
- 9 Q. Okay. And when he said that he was locked up for
10 murder, what was your response when he said that?
- 11 A. My response, I was like murder? He was like, yes, then
12 he began to say that -- he said, I did it, but your
13 cousin didn't have to told -- tell on me.
- 14 Q. When he was talking about your cousin didn't have to
15 tell on him, who was he talking about?
- 16 A. Corey Liner.
- 17 Q. Okay. All right. When he made the statement to you
18 that he did it, what was he talking about when he said
19 I did it?
- 20 A. He was talking about the murder charge.
- 21 Q. Okay. And who did he tell you that he murdered?
- 22 A. Tory York.
- 23 Q. Okay. Now, did he say anything else or make any other
24 comment about any one who told on him?
- 25 A. All he said was, When I see him, I'm going to get your

DEMETRIC MACK DIRECT BY MS. BARR

1 cousin as collateral.

2 Q. Okay. Now, at the time when y'all had this
3 conversation, was Corey Liner in jail at Williamsburg
4 County? Was he there with y'all?

5 A. No, ma'am.

6 Q. Okay. Did you at some point either write to Mr. Liner
7 or tell him once you were released what Arthur Moseley
8 had told you?

9 A. No, ma'am. He just came back from the State
10 penitentiary from doing time --

11 Q. Okay. Don't tell me about that.

12 A. Well, he just came in.

13 Q. Okay. Did you at any point in time tell him what
14 Arthur Moseley had told you about admitting to killing
15 Tory York?

16 A. He asked me did I see him and I told him yeah and me
17 and him talked and he told me what he had done. And
18 then that's when they called Mr. Liner when --

19 Q. Okay. Don't -- you can't get into a whole lot about
20 what other people said because it's hearsay.

21 A. Yes, ma'am.

22 Q. But I wanted to just be sure, at some point, you talked
23 to Corey Liner?

24 A. Yes, ma'am.

25 Q. And you told Corey Liner what Arthur told you?

DEMETRIC MACK DIRECT BY MS. BARR

- 1 A. Yes, ma'am.
- 2 Q. Okay. Now, in terms of the information that Arthur
3 Moseley told you about killing Tory, did you tell an
4 officer of the Kingstree Police Department?
- 5 A. No, ma'am.
- 6 Q. Okay.
- 7 A. Nothing but the investigator when he called me up front
8 that day.
- 9 Q. Okay. Do you remember when that was?
- 10 A. No, I can't remember exactly.
- 11 Q. Okay. Do you remember signing a statement about the
12 comments that Arthur Moseley made to you?
- 13 A. Yes, ma'am. When he called me up front.
- 14 Q. Okay.
- 15 A. I told them.
- 16 Q. I'm going to show you this particular --
- 17 THE COURT: Mark it for ID, please.
- 18 MS. BARR: I'm sorry, Judge.
- 19 (State's Exhibit No. 4 was marked for
20 identification.)
- 21 BY MS. BARR:
- 22 Q. I'm going to show you what's been marked for
23 identification purposes as State's Exhibit No. 4. Is
24 this the statement that you gave to Officer Kester?
- 25 A. Yes, ma'am.

DEMETRIC MACK CROSS BY MR. MOSELEY

- 1 Q. And what's the date on that particular statement?
- 2 A. 05/14/07.
- 3 Q. Now, at that time, could you read or write?
- 4 A. No, ma'am.
- 5 Q. Okay. Who, actually, physically wrote the statement?
- 6 A. The officer that spoke to me..
- 7 Q. And where did the officer who spoke to you get the
- 8 information from to write in the statement?
- 9 A. From me.
- 10 Q. Okay. All right. Did he read to you the statement
- 11 after he wrote it?
- 12 A. Yes, ma'am.
- 13 Q. Did it say everything that you told him?
- 14 A. Yes, ma'am.
- 15 Q. Did you agree with the statement?
- 16 A. Yes, ma'am.
- 17 Q. Did you sign it?
- 18 A. Yes, ma'am.
- 19 Q. Were you telling the truth when you made that
- 20 statement?
- 21 A. Yes, ma'am.
- 22 Q. Are you telling the truth now?
- 23 A. Yes, ma'am.
- 24 Q. Have I made any offers to you in order to get you to
- 25 say what you said?

DEMETRIC MACK CROSS BY MR. MOSELEY

1 A. No, ma'am.

2 Q. Okay. Mr. Mack, as you sit here on the witness stand
3 today, do you have any personal ill will or hatred or
4 anything toward Arthur Moseley?

5 A. No, ma'am.

6 Q. Okay. Is it typical for inmates to kind of -- in terms
7 of your experience to kind of chit-chat with each other
8 about why they're locked up?

9 A. I mean, we back there together, you know, we ask each
10 other questions and stuff, what you locked up for and
11 things like that, you know. You get asked, you just
12 let them know.

13 Q. All right, sir.

14 MS. BARR: That's all the question that I have.
15 Please answer any questions that might be posed to you.

16 THE COURT: Mr. Carraway?

17 MR. CARRAWAY: I have no questions.

18 THE COURT: Mr. Moseley, you have any questions?

19 THE DEFENDANT: Yes.

20 CROSS-EXAMINATION

21 BY THE DEFENDANT:

22 Q. Mr. Mack, wasn't you at the family house in 2012?

23 A. (No response.)

24 Q. I had just come back from --

25 THE COURT: Did you say the family house?

DEMETRIC MACK CROSS BY MR. MOSELEY

1 THE DEFENDANT: Yes, sir, in White Oak.

2 THE WITNESS: Talking about your home?

3 BY THE DEFENDANT:

4 Q. Yes.

5 A. Yes, I was back there.

6 Q. Several occasions, right?

7 A. Yes, along with your bother.

8 Q. Yes. Didn't I call you in family room one day and my
9 room in the back?

10 A. Yes, we was back there.

11 Q. We talked about this same case, didn't we?

12 A. No, we didn't not.

13 Q. I didn't show you these medical files?

14 A. No, you did not.

15 Q. That I was in another state?

16 A. No, you did not.

17 THE DEFENDANT: No further questions.

18 THE COURT: Redirect?

19 MS. BARR: No, Your Honor.

20 THE COURT: Mr. Carraway, anything?

21 MR. CARRAWAY: Nothing, Your Honor.

22 THE COURT: All right. You can step down. Thank
23 you, Mr. Mack.

24 THE WITNESS: You're welcome.

25 THE COURT: Any objection to the witness being

1 excused?

2 MR. CARRAWAY: None, Your Honor.

3 THE COURT: Mr. Moseley?

4 THE DEFENDANT: (Mr. Moseley shakes head.)

5 THE COURT: All right.

6 Ms. Barr, you want him excused? Would you like
7 him to remain?

8 MS. BARR: No, he's free to go.

9 THE COURT: Thank you, Mr. Mack.

10 MS. BARR: Judge, we do have an issue related to
11 the pathologist. She is testifying in Beaufort County. She
12 is supposed to be here on her way here and I am not sure
13 when she'll arrived. I tried to e-mail her during one of
14 the breaks and I haven't heard back from her yet.

15 THE COURT: You have your phone on vibrate?

16 MS. BARR: I do.

17 THE COURT: Okay.

18 MS. BARR: Yes, sir.

19 THE COURT: Do you -- do you have any other
20 witnesses to call at this time?

21 MS. BARR: No, she would be the last State's
22 witness.

23 THE COURT: All right. Completely last?

24 MS. BARR: Yes.

25 THE COURT: All right.

1 All right, ladies and gentlemen, I'm going to talk
2 with the lawyers and Ms. Staggers about some scheduling
3 issues. If would you, please, kindly step to your jury
4 room. Certainly, you may not discuss the case yet okay.

5 (Whereupon, the jury left the courtroom
6 at 2:46 p.m.)

7 COURT: Ms. Barr, did you -- I know you didn't
8 have any luck in getting her just now, but did anybody give
9 you any idea where she is on the interstate?

10 MS. BARR: No, sir. My last communication with
11 her last night was that we were scheduled to start back
12 today at 11 and she -- her intent was initially when we
13 thought -- today was just come here first because she was
14 also subpoenaed for Beaufort County and so she was going to
15 come here first. Then because of weather conditions, she
16 elected to go ahead and go to Beaufort County. She was
17 scheduled to start her testimony at 12:45. I think Beaufort
18 County is probably two, two and a half hours from here. And
19 so I have not --

20 MR. CARRAWAY: May be further.

21 THE COURT: Yeah. With the people not able to
22 navigate ice in South Carolina, it's -- I really don't -- I
23 don't every know how far it is. Do you think she'll be here
24 by 3:30 or you really don't have any way of knowing?

25 MS. BARR: Judge, Linda has her cell phone number,

1 so she's just left to go to try to reach her by cell phone.

2 THE COURT: Okay.

3 All right. I guess in that instance -- Ms.

4 Staggers did order the jury some sandwiches. They should be
5 here by 3:15. And we'll just have to do what we can when we
6 can. But as soon as you hear anything, could you let me
7 know?

8 MS. BARR: Absolutely, judge.

9 THE COURT: All right. We'll take a recess at
10 this point.

11 THE DEFENDANT: Your Honor?

12 THE COURT: Wait before we break.

13 Yes, sir?

14 THE DEFENDANT: Yes, due to rules of discovery, I
15 never received that document, sir. And investigator was
16 also asking and I also asked Mr. Verdell Barr. I never -- I
17 don't have that document nor that statement, sir.

18 THE COURT: Ms. Barr, could you --

19 You're talking about the statement?

20 THE DEFENDANT: Yes, sir, that whole thing on him
21 coming in, sir.

22 THE COURT: All right. Can I see the document
23 that's been marked?

24 THE DEFENDANT: Sir, do you still have Mr. John
25 David's affidavit, sir?

1 THE COURT: No, I gave it all back to you.
2 Remember you asked for it yesterday.

3 All right. Ms. Barr, what's your position on the
4 objection or the statement made by Mr. Moseley that he
5 didn't get the statement as part of your rule five
6 disclosers?

7 MS. BARR: Judge, what I may have to do is simply
8 make a copy of the cover sheet where I responded to
9 discovery because the issue is coming up several times. But
10 it's, actually, listed on the rule five discloser that I
11 made to the attorneys back in 2007. And it says handwritten
12 statement of Demtric Mack, dated 05/17/07. It's item No. 36
13 and I'll show that to the Court.

14 THE COURT: All right. But doesn't --

15 MS. BARR: But --

16 THE COURT: Doesn't rule five say that you don't
17 have to give these statements until the witness has
18 testified?

19 MS. BARR: That's correct, Your Honor. And it's
20 not a statement that the Defendant purported to have made to
21 law enforcement, it's a statement that the Defendant made to
22 another inmate, so.

23 THE COURT: All right. Rule 5(a)(2), basically,
24 states statements made by prosecution witnesses or
25 prospective prosecution witnesses do not have -- or do not

1 have to be turned over until after the witness has testified
2 on direct. But by the same token, Ms. Barr said she alerted
3 Mr. Verdell Barr to the existence of the statement.

4 And what's your common practice, that he would
5 come by to look at it or get a copy?

6 MS. BARR: No, I gave it to him.

7 THE COURT: You gave him the actual statement?

8 MS. BARR: Yes, sir.

9 THE COURT: All right.

10 All right. Mr. Moseley?

11 THE DEFENDANT: I did not receive none of this
12 stuff, no documentation pertaining to this.

13 THE COURT: All right.

14 THE DEFENDANT: And Mr. Davis has tried to speak
15 to her several times about potential witness statements that
16 she had and she never contacted him. It's in his affidavit
17 right here.

18 THE COURT: You're talking about tried to talk to
19 Ms. Barr?

20 THE DEFENDANT: Yes, sir.

21 MS. BARR: Who's Mr. Davis?

22 THE COURT: He's the private investigator.

23 THE DEFENDANT: The private investigator.

24 MS. BARR: I did speak with Mr. Davis.

25 THE COURT: And did you tell him that you -- what

1 did you tell him?

2 MS. BARR: He indicated to me that some of the
3 information that he received from Ms. Butcher was not
4 complete such that he could interview certain witnesses.
5 And one of the individuals he was trying to get ahold of was
6 Mr. Chandler and we had a problem getting ahold of
7 Mr. Chandler, too, but that was one of the concerns that he
8 had. Because most of the people who gave statements that
9 were disclosed are either federal inmates or state inmates.
10 I mean, so they were, certainly, reachable. But I do know
11 that he expressed to me that he could not get ahold of the
12 eyewitness.

13 THE COURT: Okay.

14 Anything else, Mr. Moseley?

15 THE DEFENDANT: I move for a mistrial, sir. I
16 have an affidavit that I was in Philadelphia before and
17 after the fact right now, sir.

18 THE COURT: All right. I'm talking about any
19 additional argument on Mr. Demtric Mack's statement?

20 THE DEFENDANT: Yes, sir, I move for it to be
21 retracted. I move for a mistrial pertaining to it, period,
22 because I never received that documentation and I have
23 documentation due to disagreements with my former attorney,
24 Mr. Barr, information from him I did not receive and I
25 showed you those other documents.

1 THE COURT: All right. Do you have any input on
2 this, Mr. Carraway, just to keep the record clear?

3 MR. CARRAWAY: No I don't.

4 THE COURT: All right.

5 All right. Anything else, Ms. Barr?

6 MS. BARR: No, Your Honor.

7 THE COURT: Mr. Moseley, according to the
8 prosecutor, number one, she turned over the statement to
9 Mr. Verdell Barr. Number two, even if she didn't, rule
10 5(a)(2) says that she does not have to do that until the
11 witness has testified on direct. Actually, I believe she
12 gave you and Mr. Carraway the statement right before she
13 began questioning of Mr. Mack on direct. So if there's any
14 objectionable conduct, I don't see it and I, certainly, deny
15 your motion for a mistrial on this basis.

16 You have affidavits that pertain to your
17 whereabouts?

18 THE DEFENDANT: Excuse me?

19 THE COURT: You have affidavits as to your
20 whereabouts?

21 THE DEFENDANT: Yes, sir, I have documentation
22 that I was in Philly before and after the event.

23 THE COURT: All right. And who are those
24 affidavits from?

25 THE DEFENDANT: No, these aren't affidavits.

1 These are medical documents that I was in that city.

2 THE COURT: All right. Hand those to an officer
3 and he'll hand them to me.

4 (pause.)

5 THE COURT: Ms. Barr, I hate to be picky, but do
6 you have your phone where you'll be able to hear it or feel
7 it?

8 MS. BARR: Yes, sir, I've got it in my hand.

9 THE COURT: Oh, you've got it in your hand?

10 MS. BARR: Yes, sir.

11 THE DEFENDANT: May I speak, Your Honor?

12 THE COURT: No. I'm reading what you handed up
13 just for a second. Now --

14 THE DEFENDANT: There's another document, too.

15 THE COURT: Okay. Yes, sir.

16 Thank you.

17 All right. Now have, I don't -- I'm kind of in a
18 quandary here. You've handed me these -- you say that these
19 purport to show that you were in --

20 THE DEFENDANT: Philadelphia before --

21 THE COURT: Before and after?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. How about on March 23?

24 THE DEFENDANT: I don't have that documentation --
25 but I moved with my aunt in Philadelphia, that's where -- my

1 mother because I had a mental breakdown and I moved to
2 Philadelphia and those show I attempted to get disability
3 and all. I been in and out of psychiatric hospitals.

4 THE COURT: Okay. Do you have -- okay. I'll hand
5 --

6 MS. BARR: Judge, may I see those?

7 THE COURT: Mr. Carraway, you want to see these?

8 MR. CARRAWAY: No.

9 THE COURT: Mr. Moseley, can Ms. Barr see those?

10 THE DEFENDANT: Yeah, she can see them. That's
11 part of why I was asking you for the alibi evidence. I was
12 in Philadelphia. I was sick in the head, sir, in and out of
13 hospital. It shows when I applied for benefits and all,
14 sir.

15 THE COURT: Okay. Just -- those can be marked --
16 certainly, marked, at least, as a Court's Exhibit or your
17 exhibit for ID, perhaps, not to go to the jury, but they
18 show that you were in Philadelphia in January and April of
19 2001. None of those, unless you point me to a date, shows
20 that you were in Philadelphia either in March or on
21 March 23, 2001. I just want to make sure that the record
22 includes that. But you're, certainly, free to have those
23 put in the record. They may -- it's possible they may not
24 go to the jury, but, at lest, they're in the record in
25 support of your motion for a mistrial.

1 THE DEFENDANT: I would like that, sir, and copies
2 back. I won't to know why they cannot be shown to the jury.

3 THE COURT: Because we have rules of evidence and
4 subject to certain arguments that may be made, they maybe
5 hearsay, they may not be hearsay and it may not end up
6 making any difference to anybody and they may come in, I
7 don't know. I'm just telling you they're going to be marked
8 if you want them marked.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. So they could be stapled and
11 have a little white sticker put on it. Right now, they'll
12 be Court's Exhibit No. 1.

13 (Court's Exhibit No. 1 was marked for
14 identification.)

15 THE COURT: Now, you have additional ones?

16 THE DEFENDANT: I haven't reviewed everything.

17 THE COURT: You haven't reviewed everything?
18 Well, let's do this, as soon as you have a chance to review
19 it -- right now, I'm going to have to talk to the jury.
20 Since this is a criminal case, I'll have to bring the jury
21 out because everything has to be done in the presence of the
22 Defendants. I'm going to tell the jury that we're waiting
23 on the last State's witness and that some sandwiches are on
24 the way for them. And then by that time, perhaps, Ms. Barr
25 may have heard from Dr. Presnell.

1 Okay. You can bring the jury in.

2 (Whereupon, the jury returned to the
3 courtroom at 2:58 p.m.)

4 THE COURT: Okay. Don't get too comfortable
5 because you're going to be getting up in just a second.

6 (Laughter.)

7 THE COURT: We're waiting on the last State's
8 witness to arrive. She's a testify doctor in Charleston.
9 She's testifying in Beaufort, which she did about 12:00, so
10 she's on the way here. Ms. Sagers has ordered something
11 for you to eat and it should be here by 3:15, so if would
12 you be -- continue to be patient just like you have been and
13 we'll have something for you, at least, to eat in the next
14 15 minutes. If there's any one -- and I do not intend to do
15 any additional work in front of you after this witness
16 testifies, so we will be -- I'm 90 percent sure we'll be
17 recessing well before five and we'll pick up in the morning
18 with any additional business. But, please, go to your jury
19 room. Of course, continue to not discuss the case at any
20 way all. Thank you again for your patience.

21 (Whereupon, the jury left the courtroom
22 at 3:00 p.m.)

23 THE COURT: All right. Ms. Barr, you can be at
24 ease and work on your phone.

25 Now, Mr. Moseley, after the last State witness's

1 testifies, the State will rest. I will first go to Mr.
2 Carraway after that, ask if he has any motions. He will
3 make any motions that he wants to make. And then I will ask
4 you if you have any motions to make. Of course, the juror
5 will be out of the courtroom. I'm going to ask Mr. Carraway
6 to discuss with his client his Fifth Amendment rights about
7 whether or not he will or will not testify, things of that
8 nature. And I will be instructing you very much along the
9 same lines about what your rights are. And if you would
10 like more for me to review that you now, at least,
11 preliminarily, I can do that. Would you like for me to do
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, I'm not going to put you
15 under oath -- typically, what I'll do when we, actually, do
16 this, I will put you under oath, I will put Mr. Liner under
17 oath. This will be separate.

18 I will, basically, tell you this, that we -- after
19 the State rests, we have reached the stage of the trial
20 where you can present a defense. What that means is is you
21 can call witnesses. You can testify yourself. You will
22 subject to the same rules that govern the direct and
23 cross-examination of any other witnesses. But before I get
24 to that, I want to tell you that under the Fifth Amendment
25 to the constitution of the United States, you have the right

1 to testify or not testify. The amendment states in
2 pertinent part this no person in any criminal case can be
3 forced or compelled to be a witness against himself. That
4 means that if you want to testify you can. If you do not
5 want to testify, you do not have to. And what I will tell
6 Mr. Liner, because he has counsel, I will tell him that even
7 his own lawyer can't call him to the stand against his will.
8 Obviously, the State can't call either one of you to the
9 stand. I can't make you testify. There's no one on this
10 earth that can make you testify because the right you have
11 under the Fifth Amendment is a personal right. Since it is
12 a personal right, no one can give it up except for you.

13 Going back to your testimony, if you decide to
14 testify, you would be subject to the same general rules that
15 govern the direct and cross-examination of any witness who's
16 testified. In other words, you will be able to testify.
17 There won't be anybody asking you questions on direct. You
18 will be able to testify about any relevant matters and will
19 be subject to the same rules of evidence and procedure that
20 have governed the rest of the questioning of other
21 witnesses.

22 Yes, sir.

23 THE DEFENDANT: So if I get on the stand, I can
24 attest to my version that not being part of this period to
25 the jury?

1 THE COURT: Yes, sir. You can tell them you
2 weren't there. You can tell them you were there, but. You
3 can tell them anything -- you can testify, but there are --
4 you're still subject to the hearsay rules and the other
5 rules of evidence.

6 THE DEFENDANT: Okay. Also, can I attest to these
7 documents showing that I was before and after, not exactly
8 on the day of the crime, but I was attempting benefits, et
9 cetera? I can attest to these, also.

10 THE COURT: As I mentioned earlier, I do not know
11 if the State or if Mr. Liner will object. I don't know.
12 Only thing I can tell you is that your testimony in general
13 will be subject to the rules of evidence and the rules of
14 procedure.

15 Now, I don't know -- if nobody objects to it, you
16 can testify. I don't know and I don't want to know right
17 now whether or not anybody's going to object. But let me go
18 a little bit further and explain your rights. Going back to
19 your testimony, if you have been convicted of a crime
20 involving dishonesty or false statement and that conviction
21 or your release from confinement was within the last 10
22 years, that conviction will come in for the sole reason of
23 -- if they want to attack your believability. If the
24 conviction or your release from confinement was more than 10
25 years ago, it still may come in, but it's a lot harder for

1 them to get it in. It's much more difficult. There's a
2 balancing test I have to apply. In addition, if you have
3 been convicted of a crime involving a term of imprisonment
4 for more than one year and if I determine that the probative
5 value outweighs any prejudicial effect to you, that
6 conviction can also come in for the purpose of the other
7 side or the State attacking your believability. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 Now, Ms. Barr, while we're here, does the State
12 have any convictions of either Mr. Moseley or Mr. Liner that
13 it would seek to introduce for credibility purposes?

14 MS. BARR: Judge, based on his -- Arthur Moseley's
15 rap sheet, looks like he was convicted on March 24, 2003,
16 for failure to stop for a blue light and got an 18-month
17 sentence. Now, that, obviously, wouldn't go to dishonesty,
18 but it carries more than a year.

19 THE COURT: Did he go to jail?

20 MS. BARR: Look likes he went to SCDC.

21 THE COURT: Okay. Do you know when he was
22 released?

23 MS. BARR: I do not, but I can find out, Judge.

24 THE COURT: Okay. Because the balance --

25 THE DEFENDANT: October '05, sir.

1 THE COURT: October '05?

2 THE DEFENDANT: Yes, sir. Blue light.

3 THE COURT: Okay. So he was released within the
4 last 10 years and you would have to establish that the
5 probative value of that conviction outweighs any prejudicial
6 effect to him and I've got this five factor test to apply.
7 All right. We'll get to that if he decides to testify.

8 Now, how about Mr. Liner?

9 MS. BARR: Judge, and also Mr. Moseley has a --
10 well, he had a charge for PWID crack cocaine on
11 February 5th, 2003. I'm trying to find out whether or not
12 it's a conviction. I have a whole rap sheet on him, updated
13 rap sheet.

14 THE COURT: Okay. But we can cover that when the
15 time comes.

16 MS. BARR: Yes, sir.

17 THE COURT: But you understand that will be in
18 play. I have to make the determination under the rules
19 whether that comes in.

20 All right. Now, Mr. Moseley, what I will also be
21 questioning you about later on once the State has rested is
22 that you must understand that even though you can consult
23 with people you want to consult with about whether or not
24 you will or will not testify, the final decision will be
25 yours. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Again, that is because this is your
3 right. This is not anybody's else's right to remain silent.
4 If you decide not to testify, I will -- and Mr. Liner, the
5 same thing, if you decide not to testify, I will tell the
6 jury that they cannot give that any consideration at all.
7 They cannot think about it. They can't talk about it. And
8 the fact that you didn't testify couldn't be considered by
9 them at all. If you do decide to testify, I tell then that
10 the fact this you've testified or even if you've offered
11 other witnesses, that does not mean that you have taken over
12 or assumed the burden of proving anything. But in the end,
13 the decision will be yours. Later on, after the State rest,
14 I will put both of you under oath and go over that very
15 carefully, but I just wanted to give you a heads up on what
16 I will be talking to you about.

17 Yes, ma'am.

18 MS. BARR: Judge, the only other thing as it
19 relates to Mr. Minor obviously, he had the CSC with a minor
20 back in October of 2003 where he received a five-year
21 sentence.

22 THE COURT: And he was released within the last 10
23 years?

24 MS. BARR: Yes, sir.

25 THE COURT: And I would have to use the same five

1 factor balancing test and you would have to establish the
2 probative value outweighs any prejudicial effect to Mr.
3 Liner.

4 So, I guess, Mr. Carraway, y'all better be
5 prepared to argue that.

6 Yes, sir.

7 MR. CARRAWAY: I have three witnesses and all of
8 them is in prison. One of them is in state prison. One of
9 them is in federal prison right here --

10 THE COURT: Okay.

11 THE DEFENDANT: -- in Williamsburg County and
12 another one is in federal prison. I'm not sure where he is.
13 I think we asked Carlos York's sisters. Debra Collins asked
14 him. They're not sure where he is.

15 THE COURT: What's his name?

16 MR. CARRAWAY: Carlos York. He is Tory York's
17 cousin.

18 THE COURT: Okay. Well, have y'all subpoenaed any
19 of them?

20 MR. CARRAWAY: No, I just got with him this
21 morning. He was, of course, not here yesterday.

22 THE COURT: Well, we're not going to begin any
23 presentation of evidence today from y'all, but where is the
24 other -- who are the three witnesses you intend to call?

25 MR. CARRAWAY: Lamar Franklin, who is in federal

1 prison right here in Williamsburg County. Alphonso Pearson,
2 who is at state prison here.

3 THE COURT: Do you know where?

4 MR. CARRAWAY: I don't know where he is.

5 MS. BARR: Alphonso is in Evans, Judge.

6 THE COURT: In Bennettsville, that's where Evans
7 is.

8 MS. BARR: Okay.

9 THE COURT: I think it's in Bennettsville. I know
10 it's in Marlboro County. I'll sign an order of transport
11 getting him here as long we have a definitive idea of where
12 he is. You've got to do the order.

13 MR. CARRAWAY: What's the problem with -- is there
14 a problem with the federal prison here?

15 MS. BARR: It is.

16 THE COURT: Not any problem with me, but I'm not a
17 federal judge.

18 MR. CARRAWAY: Are you saying that you can get him
19 here?

20 THE COURT: No, I can't get a federal prisoner
21 here. I can't order a federal prisoner to do anything.

22 MR. CARRAWAY: Okay.

23 THE COURT: Now, I signed these orders -- what are
24 those orders called --

25 MS. BARR: Write of habus corpus.

1 THE COURT: I signed one for -- no, I didn't sign
2 it. Somebody signed one for somebody in this case.

3 MS. BARR: Yes, sir.

4 THE COURT: Who was it?

5 MR. BROWN: I think it was for Lonnie Dozier. I
6 think I brought it to Your Honor in chambers.

7 THE COURT: Okay. You can look at that and I'll
8 be happy to sign the same order if you present it to me.
9 Now, it's -- federal prisons are a different animal, Mr.
10 Brown, Ms. Barr, I don't have to educate you on that. We're
11 not going to do that today, but once we break, you better
12 get somebody working on that.

13 MR. CARRAWAY: Okay.

14 THE COURT: Alphonso Pearson, he's --

15 MR. CARRAWAY: He's in state prison. They say
16 he's at Evans. Is that what y'all were saying?

17 MS. BARR: (Ms. Barr nodded head.)

18 THE COURT: All right. And Carlos is in federal
19 prison?

20 MR. CARRAWAY: Carlos York is in federal prison?

21 THE COURT: And who's the other one.

22 MR. CARRAWAY: Lamar Franklin is in federal prison
23 right here in Williamsburg County.

24 THE COURT: But you don't know where Carlos is?

25 MR. CARRAWAY: I do not know where Carlos is.

1 THE CLERK: Coastal.

2 MR. CARRAWAY: They say Carlos is in Coastal.

3 THE COURT: Where is that?

4 MR. CARRAWAY: Is that in Charleston? Mr. Liner
5 says that is in Charleston.

6 THE COURT: Well, I will sign the appropriate
7 orders as they are submitted to me, but I can make no
8 arrangements myself to, actually, physically get them here.
9 I can enforce an order of transport that I signed to Evans.

10 MR. CARRAWAY: For a state prisoner?

11 THE COURT: For a state prisoner, but you can read
12 in the clerk's file the writ of habus corpus to get Mr.
13 Dozier here.

14 MS. BARR: Judge, I've got some information from
15 Dr. Presnell. Mr. Brown spoke with her just a moment ago.
16 She was just leaving Beaufort County. Yes, sir.

17 THE COURT: Well, we're not going to wait on her.
18 I mean, it's 3:15. We can't ask this jury to wait until
19 5:30. Is that what you want to do?

20 MS. BARR: No, sir, Judge. I would want if Your
21 Honor please to just start back in the morning. I know
22 we've lost a lot of time in the last couple of days, but all
23 of it is not -- well, none of it has been --

24 THE COURT: I know it's not your fault, but if
25 we -- I anticipate that her testimony would probably take 30

1 minutes or so.

2 MS. BARR: Yes, sir.

3 THE COURT: If that, on direct.

4 MS. BARR: Yes, sir.

5 THE COURT: So we could start at nine, then we --
6 Mr. Carraway can use this afternoon to get those people here
7 that he wants to get here.

8 MS. BARR: Yes, sir.

9 THE COURT: Or, at least, give me the orders.

10 MS. BARR: Yes, sir.

11 THE COURT: All right. Mr. Carraway, Ms. Barr
12 said that Dr. Presnell cannot get here. She's just leaving
13 Beaufort.

14 MR. CARRAWAY: That's three hours.

15 THE COURT: That's just too much.

16 Mr. Moseley, what I'm going to do is adjourn.
17 We'll get back together at nine in the morning. That will
18 give Mr. Carraway to get those orders up to me. I will be
19 here in the office and if you have any orders that you want
20 me to sign to get witnesses here who are incarcerated -- I'm
21 not going to prepare the orders, but I will sign them.

22 THE DEFENDANT: Okay. Could you please -- being
23 that I'm in -- it's kind of hard for me to contact and do
24 certain things. Would you, please, instruct the officer to
25 allow me to make several phone calls so I can have my

1 witnesses available for when the State rest their case?

2 THE COURT: All right. Well, actually, when
3 Mr. Carraway rest his case. Of course, he could end up
4 deciding not to call anybody.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: But whoever you get, you're going to
7 need to get them here by 9:30 in the morning.

8 THE DEFENDANT: Okay.

9 THE COURT: If you're not ready, they're just
10 going to have to wait. That's the way it typically works.
11 I can't instruct you how to do it. I will, certainly, ask
12 the officers if they can give you access to a telephone. I
13 think that's very reasonable.

14 THE DEFENDANT: They will be escorting me back.

15 THE COURT: You're going to be staying here
16 tonight, not in the courthouse, but Williamsburg County.

17 THE DEFENDANT: Oh, okay. Thank y'all.

18 MR. CARRAWAY: Zachary Woods would be one other.
19 He is in state prison.

20 THE COURT: What you'll have to do -- I would do
21 it, I don't have a way to print a thing. If we were in
22 Sumter, I would just tell my secretary to do an order of
23 transport for Zachary Woods and I'll sign it. I just don't
24 have that capability here.

25 All right. Is there any objection to be bringing

1 the jury in and telling them that we're recessing for the
2 day, Ms. Barr?

3 MS. BARR: No objection, Your Honor.

4 THE COURT: Mr. Carraway?

5 MR. CARRAWAY: No.

6 THE COURT: Mr. Moseley?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. And then what I will do is
9 tell them they can wait for their sandwich or they can go
10 and we can eat it.

11 (Laughter.)

12 MS. BUTCHER: I've got the subpoena that my
13 secretary is supposed to be faxing over. I would just like
14 for him before he goes to the jail to have the opportunity
15 to fill out the names.

16 THE COURT: That will be fine. I will ask the
17 officers to hold him here. Let me talk to the jury first.

18 (Whereupon, the jury returned to the
19 courtroom at 3:17 p.m.)

20 THE COURT: The next witness, as I mentioned, is a
21 medical doctor from Charleston, who is testifying in
22 Beaufort. According to the information we've received,
23 she's under subpoena, she is just leaving Beaufort. We're
24 not going to wait on her today. We would not finish this
25 case today anyway, but more than likely, I don't know, but

1 more than likely, her testimony is not going to take
2 terribly long. It may take a while. But what we're going
3 to do now is break for the day. I hate to have you come in
4 and out, but the reason that I say all of this on the record
5 is that the rules that we operate under require me to put
6 all of this on the record.

7 We're going stop for the day and get back together
8 at 9:00. I know that's little bit earlier than we normally
9 start, but probably not early for you. We're going to start
10 at 9:00, promptly at nine. In the interim, please, do not
11 discuss the case amongst yourselves or with anybody else.
12 We will begin promptly at nine.

13 Now, Ms. Staggars did order you sandwiches. You
14 can stay in the jury room and wait on it and take it with
15 you, but that's entirely up to you.

16 Now, I know that it's not dark, but if there's
17 anybody who wants help getting to the car, let one of
18 bailiffs know and, certainly, arrangements can be made for
19 that. Again, thank you for your patience. And you can wait
20 in the jury room for your sandwich or you can go on about
21 your way with the instructions not to discuss the case,
22 don't do any research about it or gather any information
23 about it at all. See you tomorrow morning at nine a.m.
24 Thank you.

25 (Whereupon, the jury left the courtroom

1 at 3:19 p.m.)

2 THE COURT: Yes, sir, Mr. Carraway?

3 MR. CARRAWAY: My client knows where two witnesses
4 are and I'd like for him to be allowed to stay out to find
5 them. He's got to go to the beach to find somebody. He
6 came in here. He's with his fiance here today. He
7 understands that no matter whether he's here or not, this
8 trial is going to go on. But they're two people that he
9 said --

10 THE COURT: Is he technically in custody now?

11 MS. BARR: No, sir.

12 THE COURT: Okay. Do you object to him remaining
13 out?

14 MS. BARR: No, sir, Judge.

15 THE COURT: Okay. All right.

16 Now, Mr. Liner, could you stand up, please. I
17 know it's kind of hard to see me, but raise your right hand
18 real quickly.

19 Just raise your right hand right where you are.

20 THEREUPON,

21 COREY LINER,

22 after having been duly sworn, testified as follows:

23 THE COURT: All right. You can put your hand
24 down. Now, of course, you know the trial has commenced and
25 has gone on today. The State does not have any objection to

1 you remaining out on your own recognizance, but do you
2 understand that if you're not back here by quarter to nine
3 in the morning in this courtroom one of two things could
4 happen.

5 DEFENDANT LINER: (Mr. Liner nodded head.)

6 THE COURT: We will go on without you or I'll
7 issue a warrant for you to be apprehended and be brought up
8 here. Do you understand that?

9 DEFENDANT LINER: I will be here, sir.

10 THE COURT: Now, if you're not here by quarter
11 till nine, somebody might come looking for you. And,
12 specifically, if you're not here by nine, we'll go on
13 without with the presentation of the evidence in this case.
14 Do you understand that?

15 DEFENDANT LINER: Yes, sir.

16 THE COURT: All right.

17 And Mr. Carraway, of course, I'm not going to
18 comment on any efforts of any witnesses that exert in the
19 undue influence on others, but if he wants to go out looking
20 for witnesses, there's, certainly, nothing wrong with that.
21 Certainly, he's free to do that.

22 MR. CARRAWAY: Okay.

23 THE COURT: Okay.

24 Thank you, Mr. Liner.

25 All right. Anything else before we break, Mr.

1 Carraway?

2 MR. CARRAWAY: Nothing further, Your Honor. I
3 think we're doing a couple of -- I'm trying to do a couple
4 orders down here for just the two guys --

5 THE COURT: I will be here.

6 MR. CARRAWAY: Okay.

7 THE COURT: And habus corpus for the others if you
8 get those up.

9 Mr. Moseley, anything you'd like to put on the
10 record before we stop?

11 THE DEFENDANT: Just dealing with my documentation
12 submitted in evidence. And she's going to get the subpoena
13 things for people that I need subpoenaed.

14 THE COURT: If you want those submitted as a
15 Court's Exhibit right now, they need to be stapled together
16 and marked or you can hang onto them overnight and read them
17 and give them to me in the morning.

18 THE DEFENDANT: Okay. Sir.

19 MS. BUTCHER: Your Honor, just because of the
20 closeness in time, when he fills out his subpoenas, I
21 hate -- I would hate to take them to the sheriff's office
22 and the process server is not there or whatever, I just want
23 to make sure I can get them served.

24 BAILIFF: --

25 MS. BUTCHER: Is somebody going to still be here

1 in the courtroom that will be watching over him that I can
2 give to?

3 BAILIFF: If not, you need to bring them to the
4 sheriff's office.

5 MS. BUTCHER: Well, as soon as he signs them --
6 I've just got to get them there. We printed them up in the
7 office --

8 THE COURT: You're talking about within the next
9 10 or 15 minutes?

10 MS. BUTCHER: Yeah, and I've got to track down the
11 clerk of court to sign them.

12 THE CLERK: She's right here.

13 MS. BUTCHER: Oh, it's been a long day.

14 THE COURT: She's easy to track down. She's
15 always here. She spends the night here.

16 (Laughter.)

17 THE COURT: Okay. I will be in my office, Mr.
18 Carraway.

19 (The following proceedings were
20 concluded.)

21 (The following proceedings were held on
22 January 31, 2014.)

23 THE COURT: All right. Is the State ready for the
24 jury?

25 MS. BARR: State's ready, Your Honor.

1 THE COURT: Mr. Carraway, ready for the jury?

2 MR. CARRAWAY: Ready, Your Honor.

3 THE COURT: Mr. Moseley, are you ready for the
4 jury?

5 DEFENDANT MOSELEY: Yes, sir.

6 THE COURT: Mr. Moseley?

7 DEFENDANT MOSELEY: Yes, sir.

8 THE COURT: You ready for jury?

9 DEFENDANT MOSELEY: Yes, sir.

10 THE COURT: All right. Bring in the jury.

11 (Whereupon, the jury returned to the
12 courtroom at 9:19 a.m.)

13 (State's Exhibit No. 5 was marked for
14 identification.)

15 THE COURT: All right. Thank you for your
16 patience, ladies and gentlemen. I know that all of you were
17 here on time and I apologize mightily for not starting at
18 nine. This will not happen again.

19 Now, I want to correct one thing. I previously
20 appointed Ms. Mack as foreperson and that was improper on my
21 part because you are an alternate, so I am going to
22 substitute Ms. Hundley --

23 Where is Ms. Hundley? I'm going to substitute you
24 as the foreperson. So that will be something I will discuss
25 in more detail with you and the rest of the jury at the end

SUSAN PRESNELL DIRECT BY MS. BARR

1 of the case.

2 All right. We're ready to proceed.

3 Mr. Barr, you can call your next witness.

4 MS. BARR: Thank you, Your Honor, the State calls
5 Dr. Susan Presnell.

6 THEREUPON,

7 SUSAN PRESNELL, M.D.

8 after having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BARR:

11 Q. Dr. Presnell, state your full name for the record for
12 us.

13 A. My name is Susan Erin Presnell, P-R-E-S-N-E-L-L.

14 Q. All right. And you traveled from Charleston this
15 morning?

16 A. Yes.

17 Q. Do you need a second to make sure you get your report
18 and everything?

19 A. I have it. I'm just looking for a pen. Okay. I'm
20 ready.

21 Q. Okay. Dr. Presnell, tell these ladies and gentlemen of
22 the jury what you do for a living?

23 A. I'm a forensic pathologist. I work at MUSC down in
24 Charleston, so I do forensic pathology.

25 Q. All right. And tell what a forensic pathologist is and

SUSAN PRESNELL DIRECT BY MS. BARR

1 what a forensic pathologist does.

2 A. Well, I think everyone is kind of getting familiar with
3 the occupation of a forensic pathologist, but just to
4 back up and explain how to get there, a pathologist --
5 pathology is the study of disease. So if you go to
6 like your family doctor and they take some tissue off
7 of you, say a skin biopsy or breast biopsy, that tissue
8 will go to a pathologist. They look at it and then
9 they diagnose disease, whether there's cancer or not or
10 infection or not. So that's general pathology and I
11 trained as general pathologist. But then I
12 subspecialized in forensic pathology where we're not
13 just looking at a piece of tissue, instead we're
14 looking at the entire body of a deceased individual.
15 And we are looking for diseases, but we're also
16 evaluating trauma and the processes through the autopsy
17 and, ultimately, come up with a cause and manner of
18 death.

19 Q. All right. And, of course, you're a licensed medical
20 doctor in the State of South Carolina?

21 A. Yes.

22 Q. And would you tell us just very briefly about your
23 educational background to get your medical license?

24 A. Well, I went to Clemson for my microbiology degree and
25 then went to MUSC, Medical University of South

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1 Carolina, for medical school. After that, I chose
2 pathology residency training, which was five years. and
3 then my subspecialty was forensics for a year. So then
4 I've also taken the Board, so I'm Board certified in
5 pathology and forensic pathology.

6 Q. Okay. And how long have you been a doctor?

7 A. The M.D. degree came in 1993.

8 Q. Okay. So 21 years?

9 A. Yes.

10 Q. I know I'm telling your age, but.

11 (Laughter.)

12 Q. And, ma'am, have you had occasion throughout your
13 career to testify in state courts in South Carolina?

14 A. Yes.

15 Q. You've testified as an expert in the field of forensic
16 pathology?

17 A. Correct.

18 Q. And how many times, roughly, have you testified and
19 been qualified as an expert witness in the field of
20 forensic pathology?

21 A. It would be an estimate of around 100.

22 Q. Okay.

23 MS. BARR: Your Honor, at this time, we would
24 tender Dr. Presnell as an expert in the field of forensic
25 pathology?

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1 THE COURT: Any objections or questions, Mr.
2 Carraway?

3 MR. CARRAWAY: Without objection.

4 THE COURT: Mr. Moseley?

5 DEFENDANT MOSELEY: No objection, sir.

6 THE COURT: All right. Ladies and gentlemen, as
7 you recall, the other day I instructed you that there is an
8 exception in our rules of evidence for witnesses who are
9 qualified by education, training or experience in a
10 particular field. Those witnesses can give opinions and the
11 reason for those opinions. Again, as I will instruct you
12 more closely at the end of the case, that does not mean that
13 you are bound by the opinion of the expert and you are to
14 give the expert's testimony the weight that you believe it
15 deserves.

16 Ms. Barr, she is qualified in the field of
17 forensic pathology.

18 MS. BARR: Thank you.

19 BY MS. BARR:

20 Q. Dr. Presnell, back on March the 24th of 2001, did you
21 participate in the autopsy of the body of Tontore York?

22 A. Yes, we did a complete autopsy on him.

23 Q. Okay. And, specifically, as it relates to this case
24 and in general, how does a body usually make it from
25 one county to the Medical University of South Carolina,

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1 how does that process usually work?

2 A. Well, South Carolina is a coroner state, so
3 Williamsburg County has their own coroner. And so that
4 coroner responds to a death and decides whether or not
5 and who would do an autopsy and he selects the place
6 where he would like to transport the person for
7 examination.

8 Q. All right. And in this case, the coroner at that time
9 was the coroner Harrison McKnight?

10 A. Yes.

11 Q. Okay. All right. Tell us -- I noted on the autopsy
12 report, it references Dr. McConnell and Dr. Curry. Can
13 you tell us about Dr. McConnell?

14 A. Yes. Dr. McConnell is me, 2001 was the year I got
15 married in October, so this was before that. I was Dr.
16 McConnell then. Then Dr. Curry, Dr. Debra Curry, she
17 was a forensic fellow in training in our training
18 program at that time.

19 Q. So you were the lead pathologist on the case?

20 A. Yes.

21 Q. Tell us about your visual observation of the body of
22 Mr. York and then tell us how you begin your
23 examination.

24 A. Well, we do our autopsies in a standard way with
25 special studies, depending on what type of case it is.

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1 So in this case, as in every case, we do the external
2 examination, document what he's wearing, take
3 photographs, back then it was pre-digital and do x-rays
4 in gunshot wound cases, document his injuries and then
5 we'll look inside to see, first, what type of internal
6 injuries there, look for any evidence, collect samples
7 for toxicology analysis and take samples to look under
8 microscope.

9 Q. All right. Let me ask you this, in terms of weighing
10 the body, how much did Mr. York weigh?

11 A. He weighed approximately 140 pounds.

12 Q. Okay. And how tall was he?

13 A. Sixty-five inches, which is five-five.

14 Q. Five feet five?

15 A. (The witness nodded head.)

16 Q. Okay. From just the visual examination of him, when
17 you first saw the body, were there obvious signs he had
18 been injured?

19 A. Yes.

20 Q. All right. Tell us about those.

21 A. Well, ultimately, Mr. York had two gunshot wounds -- or
22 two -- yes, two gunshot wounds. And I'll explain how
23 they might, actually, be one, but there are two
24 entrances and exits. One of the ones entered the
25 forearm (indicating) -- let's see, entered the forearm

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1 on -- kind of the backside here (indicating) and came
2 out on the front side here, so here to here. And just
3 went -- the bullet just went in the soft tissue, didn't
4 hit any of the bone.

5 Q. Okay.

6 A. All right. Then we have another entrance gunshot wound
7 on the right chest, a little bit below the right
8 nipple. It went into the chest, through the heart
9 going in the downward direction, so it hits the liver
10 and exits the left side of the body over on -- over
11 here (indicating). So two gunshot wounds, one through
12 the arm and one entering the right chest and exiting
13 the left side.

14 Q. Let me ask you, as a part of your standard practice and
15 in this case, did you create a diagram of the body of
16 Tontore York as it relates to entrance and exit wounds?

17 A. Yes.

18 Q. All right. I'm going to hand you what's been marked
19 for identification as State's Exhibit No. 5. And I
20 will ask you, is this the diagram that was drawn in
21 connection with the autopsy of Tontore York?

22 A. Yes, this is a copy of that diagram.

23 Q. All right. You have the original diagram in your case
24 file?

25 A. We, also, have a copy. Everything got scanned as years

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1 went by.

2 Q. All right.

3 MS. BARR: Your Honor, we move to admit State's
4 Exhibit No. 5 in evidence at this time.

5 THE COURT: Any objection, Mr. Carraway?

6 MR. CARRAWAY: No objection.

7 THE COURT: Mr. Moseley?

8 DEFENDANT MOSELEY: No objection.

9 THE COURT: No. 5 is in.

10 (State's Exhibit No. 5 was admitted into
11 evidence.)

12 MS. BARR: May the witness step down?

13 THE COURT: You need the witness to step down?

14 MS. BARR: Yes.

15 THE COURT: Okay. Doctor, if you would please
16 keep your voice up. You might want to be on the other side
17 of the apparatus so your voice is pulling towards everybody,
18 okay?

19 THE WITNESS: Okay.

20 THE COURT: On the far side of it.

21 And that's noted as a diagram, Ms. Barr?

22 MS. BARR: Yes. Yes, sir.

23 BY MS. BARR:

24 Q. All right. Ma'am, I have published State's Exhibit No.
25 5 that you've identified as being the diagram that was

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1 done by you as it relates to the autopsy of Tontore
2 York. When I asked you earlier about his height and
3 weight, have you noted his height and weight on the
4 diagram?

5 A. Yes, it's at the, as you can see, at the very top,
6 yeah.

7 Q. Sixty-five inches?

8 A. Yeah. We're using the diagram to take notes so that
9 will help us when we dictate the report later on.

10 Q. All right. You described while you were on the witness
11 stand the location of entrance and exit wounds. Can
12 you show the jurors on the particular diagram how the
13 entrance and exit wounds are depicted?

14 A. Yes, the entrance wound to forearm is labeled gunshot
15 wound A. It's GSWA, it's circled right there. The
16 exit on the forearm is labeled BGSW for gunshot wound.
17 The entrance in the right chest is labeled CGSW. And
18 the exit is labeled DGSW.

19 Q. Now, you indicated earlier about being able to explain
20 or talk about whether or not the victim was shot once
21 or twice. Can you tell us more information about that?

22 A. It's, actually, kind of harder to appreciate by looking
23 at the diagram because the diagram is in anatomic
24 position, which is with your palms forward, which is
25 kind of an unnatural position to stand in. But if you

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1 remember -- not remember, but you can see that the
2 entrance and exit are on the pinky side of the forearm
3 (indicating) and so the entrance is on the back
4 (indicating) and the exit is on the front. So if you
5 turn the hand normally like that, kind of a more normal
6 position having the gunshot wound -- just imagine a
7 gunshot wound entering here, exiting here, continuing
8 on -- say if the hand is out, continuing on to the
9 chest and then out the side.

10 Q. All right. And just for demonstrative purposes, let me
11 use me as an example, if you will. You indicated if an
12 individual has his hand pointed out at the time he is
13 shot (indicating)?

14 A. Correct.

15 Q. All right. Using me as an example, show me how that
16 could possibly -- the four wounds as you have described
17 them on the diagram how it is possible that that could
18 have come from one single bullet.

19 A. All right. So if we go in the pinky side, a little
20 more on the back (indicating), exit right here
21 (indicating), enter the right chest and exit over on
22 the left side (indicating).

23 Q. Okay. Now, let me ask you this, Dr. Presnell, do you
24 know based on your findings whether or not the victim
25 was shot once or more than once?

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1 A. No, I cannot tell that just from the autopsy.

2 Q. And in your medical opinion, is it possible that he
3 could have been shot more than once or equally as
4 possible he could have been shot one time?

5 A. Correct.

6 Q. Were there any bullets recovered from the autopsy?

7 A. No, there were no bullets.

8 Q. So no bullets were inside of him?

9 A. No -- I mean, correct, there were no bullets inside of
10 him.

11 Q. All right. You can take your seat, please, ma'am.

12 Thank you.

13 A. (Witness resumes the witness stand.)

14 Q. The victim was how old?

15 A. Twenty-two.

16 Q. Now, ma'am, you said also as part of your standard
17 protocol, you ran a tox screen on him?

18 A. Yes.

19 Q. Tell us what that is.

20 A. Well, we collect urine if there is any and some blood
21 and we'll send it to the laboratory to be tested for
22 drugs and alcohol.

23 Q. Okay. And that was done in connection with this case?

24 A. Yes, but back in 2001, what would happen is we would --
25 the toxicologist would take the urine and screen it for

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1 common drugs of abuse, so that's the extent of the
2 screen. And if the -- if it was negative, then it
3 ended the toxicology analysis at that point, but they
4 also tested the blood for alcohol. In this case, the
5 urine drug screen was negative and the blood alcohol
6 was negative.

7 Q. All right. Let me make sure I'm clear, as far as the
8 urine screen and the blood screen, did Mr. York have
9 any alcohol in his system?

10 A. No.

11 Q. Did he have in marijuana in his system?

12 A. He had no sign of it in his urine.

13 Q. Did he have any cocaine in his system?

14 A. No sign of it in his urine.

15 Q. Did he have any benzodiazepine in his system?

16 A. No sign of it in his urine.

17 Q. Okay. What about methamphetamine?

18 A. That is also included the drugs of abuse screen and
19 that was negative on the urine.

20 Q. Okay. Now, you talked about the field of pathology in
21 general. After you did your visual examination, tell
22 us about what was done from that point on?

23 A. Well, the -- so the visual, what we call the gross
24 examination, it includes the external and internal
25 examine. And then we also sampled several tissues to

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1 look at under the microscope. In this case, we sampled
2 quite a few tissues, but, really, there wasn't a whole
3 lot of additional information, maybe some fatty change
4 of the liver. He had some cysts in his spleen and
5 disruption and inflammation along the way of the
6 gunshot wound tract.

7 Q. Okay. Was he an otherwise normal healthy 22-year-old
8 male?

9 A. Yes.

10 Q. Okay. And Doctor, tell us what was the cause of death
11 of Mr. Tontore York?

12 A. It was the heart laceration and disruption of the heart
13 from the gunshot wound to his chest.

14 Q. When you say disruption of the heart, do you mean --
15 well, I shouldn't ask you -- what do you mean when you
16 say disruption of the heart in layman's terms?

17 A. Well, the bullet went through the heart.

18 Q. The bullet went through the heart. And that was the
19 cause of the death of Tontore York?

20 A. Yes.

21 Q. And you all have classifications of death -- or we have
22 classifications of death in South Carolina, correct?

23 A. Yes.

24 Q. All right. Tell us about the -- I believe there's five
25 different classifications of death?

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1 A. Well, from the medical examiner perspective, the
2 forensic pathologist are five classifications. One is
3 natural, suicide, accident. Suicide is pretty
4 self-explanatory. Homicide, which is death at the
5 hands of another. And then when we can't tell, we'll
6 put undetermined. In this case, it was homicide.

7 Q. All right. And, Dr. Presnell, have you understood all
8 of my questions?

9 A. Yes.

10 Q. Have you answered them to a reasonable degree of
11 medical certainty?

12 A. Yes.

13 MS. BARR: Thank you so much. Please answer any
14 questions that the Defense may have for you or the Court.

15 THE COURT: Mr. Carraway?

16 MR. CARRAWAY: No questions.

17 THE COURT: Mr. Moseley?

18 DEFENDANT MOSELEY: No questions, sir.

19 THE COURT: Thank you, ma'am. You can step down.

20 MS. BARR: And we ask that Dr. Presnell be
21 excused.

22 MR. CARRAWAY: No objection.

23 DEFENDANT MOSELEY: No objection, sir.

24 THE COURT: Thank you, ma'am. You can leave if
25 would you like or you can stay.

1 THE WITNESS: Thank you.

2 MS. BARR: And, Your Honor, at this time, the
3 State rest.

4 THE COURT: Thank you.

5 All right. Ladies and gentlemen, as you've heard,
6 Ms. Barr as indicated the State has rested, which means the
7 State has presented the evidence that it is going to present
8 in its case in chief. Under the rules that we must follow,
9 I'm required to take a recess at this time to discuss
10 certain matters with the attorneys and Mr. Moseley. So if
11 would you, please, go your jury room. You may not discuss
12 this case at all. We'll have you back out as soon as
13 possible. Thank you.

14 (Whereupon, the jury left the courtroom
15 at 9:39 a.m.)

16 THE COURT: All right.

17 Mr. Carraway, does Mr. Liner have any motions at
18 this time?

19 (There was no response.)

20 THE COURT: I'm going to be asking Ms. Barr in a
21 moment about the attempted armed robbery, whether or not the
22 elements have been established on that just for the purposes
23 of verdict form and so forth, but aside from that, do you
24 have any motions?

25 MR. CARRAWAY: Can we just wait and make our

1 standing motion?

2 THE COURT: Well, I think you're -- you may -- I'm
3 not going to instruct on what the procedural law is, but if
4 you have any motions at this time, you can make those.

5 MR. CARRAWAY: No.

6 THE COURT: Okay.

7 Mr. Moseley, do you have any motions?

8 (There was no response.)

9 THE COURT: Tell you what let's do, let's take
10 about 10 minutes. I think you said you needed to talk to
11 Mr. Liner?

12 MR. CARRAWAY: Yes.

13 THE COURT: You did earlier before he was here.

14 And I told you yesterday to be here at 10 minutes
15 to nine and you came walking in at 10 after nine. I don't
16 need any input from you on that, but that was my instruction
17 and that was in stone. Okay. I'll think about whether or
18 not you're going to be in custody for the rest of the trial,
19 but when I said be here at 10 minutes to nine, I really
20 meant that. You can speak to Mr. Carraway and if Mr.
21 Carraway wants to offer any explanation, that's fine, but do
22 not let that happen again.

23 We'll take 10 minutes and then I'll go back to Mr.
24 Carraway and Mr. Moseley about any motions. And, also, I
25 will be talking to both Defendants about -- under oath about

1 their Fifth Amendment rights that I went over yesterday. So
2 if you could prepare Mr. Liner for that and Ms. Butcher to
3 the extent that Mr. Moseley ask for any guidance on that on
4 what those rights are, he can consult with you on that. All
5 right. And any family members, too, subject to the
6 sheriff's office's security concerns. All right. We'll
7 take 10 minutes.

8 (Whereupon, a short recess was held.)

9 THE COURT: Just to alert those in the courtroom,
10 Mr. Carraway came into my office a moment ago and indicated
11 that Mr. Liner is going to plead. We did not discuss
12 anything about the case. He just alerted me to that. So I
13 guess they're going to need to come on out.

14 Is that correct, Ms. Barr?

15 MS. BARR: That's my understanding, Your Honor.

16 THE COURT: All right.

17 Not the jury, just Mr. Liner and Mr. Carraway.

18 Mr. Butcher, would you talk to Mr. Moseley about
19 whether or not he is going to want to call the witnesses
20 that Mr. Carraway has obtained the orders for transport on?
21 I don't -- I think one of them was --

22 MS. BUTCHER: I'll be glad to, I'm just not
23 exactly sure who they are. I think I would have to talk to
24 Mr. Carraway.

25 THE COURT: All right. What I would do is I will

1 order them to stay here. Are any of the witnesses here from
2 the other prisons?

3 BAILIFF: One of them is here, the other one is on
4 the way.

5 THE COURT: Do you know the name of the one who is
6 here?

7 BAILIFF: Pearson.

8 THE COURT: Alphonso Pearson.

9 Mr. Moseley, I just want to let you know he's here
10 and if you want to call him, he will remain here. The other
11 one is a Zachary Woods. I, certainly, don't know who he is
12 or what he might offer testimony about, but just to let you
13 know who they are.

14 MS. BUTCHER: Your Honor, would it be appropriate
15 for me to just briefly ask those people what they know or
16 anything?

17 THE COURT: You can do that with Mr. Moseley, but
18 what I want to do now is get moving with Mr. Liner. I just
19 wanted to give you an idea about that. Now, you and Mr.
20 Moseley may want to be in here for the plea, I assume you
21 do.

22 MS. BUTCHER: We do.

23 THE COURT: I don't have any idea what the
24 parameters are, what he's pleading to or anything like that.
25 I guess the first order of business is find out where they

1 are.

2 MS. BUTCHER: And, Your Honor, just for the
3 Court's information, I just spoke with Mr. Moseley about his
4 constitutional rights and Fifth amendment and everything.

5 THE COURT: All right. Mr. Carraway?

6 MR. CARRAWAY: Yes, Your Honor.

7 THE COURT: While you and Mr. Liner were coming
8 in, I told Ms. Butcher and Mr. Moseley that if Mr. Liner
9 does enter a plea that the two witnesses that I signed the
10 order of transport on, I will order them to remain here,
11 number one, for them to talk to if the witness will talk to
12 him; number two, for them to decide whether they may call
13 them or not.

14 MR. CARRAWAY: Okay.

15 THE COURT: Now, Ms. Barr, are you ready to
16 proceed?

17 MS. BARR: Yes, sir, Your Honor.

18 THE COURT: Ms. Barr, could you tell me what the
19 situation is now with regard to Mr. Liner?

20 MS. BARR: Your Honor, my understanding is that
21 Mr. Liner wishes to enter a guilty plea pursuant to the
22 count on the indictment charging him with attempted armed
23 robbery and criminal conspiracy pursuant to North Carolina
24 V. Alford. And, Your Honor, there's been no recommendations
25 or negotiations except for the State is dismissing the

1 murder charge against him.

2 THE COURT: Just make sure that everything is
3 clear. What is the max -- or what is the sentencing range
4 for attempted armed robbery?

5 MS. BARR: Zero to 20, Your Honor.

6 THE COURT: And the sentence range for --

7 MS. BARR: Conspiracy?

8 THE COURT: -- conspiracy?

9 MS. BARR: Zero to five.

10 THE COURT: Zero to five.

11 All right. Is that your understanding, Mr.

12 Carraway?

13 MR. CARRAWAY: That is my understanding.

14 THE COURT: You do represent Mr. Liner?

15 MR. CARRAWAY: I do, Your Honor.

16 THE COURT: Let's go ahead and put Mr. Liner under
17 oath.

18 THEREUPON,

19 COREY LINER,

20 after having been duly sworn, testified as follows:

21 THE COURT: Mr. Carraway, of course, the record
22 will, certainly, show that we've been here Monday, yesterday
23 and today in this case. Do you believe that your client
24 understands the elements of the offenses to which he intends
25 to plead?

1 MR. CARRAWAY: I do, Your Honor.

2 THE COURT: Does he understand all of his rights,
3 including his right to remain silent, his right to a jury
4 trial and the fact that the State has to prove the elements
5 of the crimes charged beyond a reasonable doubt?

6 MR. CARRAWAY: He does, Your Honor.

7 THE COURT: And does he understand that if he
8 enters --

9 Is this an Alford please, you said, Ms. Barr?

10 MS. BARR: Yes, sir.

11 THE COURT: Does he understand if he enters a plea
12 under Alford, he'll be sentenced and serve the prison term
13 just as if he had admitted everything?

14 MR. CARRAWAY: He does.

15 THE COURT: All right. All right. Now, do you
16 believe your client could reasonably be found guilty of the
17 offenses with which he is charged if the jury trial
18 proceeded as is?

19 MR. CARRAWAY: I do believe that this meets the
20 criteria for Alford in that he has been offered -- from what
21 has been offered and there is a possibility that there is a
22 -- there is that possibility, that's why we're here.

23 THE COURT: Possibility that he could be found
24 guilty?

25 MR. CARRAWAY: Yes, Your Honor. He could have

1 DEFENDANT LINER: Yes, sir.

2 THE COURT: If you enter that type of plea, you
3 would be telling me, I am not guilty, but I want to plead
4 guilty to get the benefit of a deal. Do you understand
5 that?

6 DEFENDANT LINER: Yes, sir.

7 THE COURT: And the deal here, Ms. Barr and
8 Mr. Carraway, would it be the dismissal of the murder
9 charge?

10 MS. BARR: Yes, sir.

11 THE COURT: All right.

12 Is that right, Mr. Carraway?

13 MR. CARRAWAY: That's correct.

14 THE COURT: Okay. Which would expose you, of
15 course, to 30 years in prison or life. Do you understand
16 ha?

17 DEFENDANT LINER: Yes, sir.

18 THE COURT: If you were convicted.

19 DEFENDANT LINER: Yes, sir.

20 THE COURT: All right. Now, if you enter this
21 plea under North Carolina v. Alford, you would still be
22 sentenced and your record would show that you had entered a
23 guilty plea. Do you understand that?

24 DEFENDANT LINER: Yes, sir.

25 THE COURT: Also, if you enter this plea, you will

1 intimidation or other tactics like that to get you to enter
2 these two pleas?

3 DEFENDANT LINER: No, sir.

4 THE COURT: Now, are you entering these two pleas
5 of your own free will?

6 DEFENDANT LINER: Yes, sir.

7 THE COURT: And you -- we've discussed earlier Mr
8 -- the fact that Mr. Carraway is your counsel. Have you had
9 sufficient time to discuss with him the case and whether or
10 not you will or will not enter these two pleas?

11 DEFENDANT LINER: Yes, sir.

12 THE COURT: Are you satisfied with the advice and
13 representation he's provided to you?

14 DEFENDANT LINER: Yes, sir.

15 THE COURT: Have you talked with him enough and
16 understand everything?

17 DEFENDANT LINER: Yes, sir.

18 THE COURT: Do you need time to talk to him now?

19 DEFENDANT LINER: No, sir.

20 THE COURT: You do have 10 days from the date I
21 sentence you, which may well be today, more than likely will
22 be today, you have 10 days to appeal these two pleas and the
23 sentences, do you understand that?

24 DEFENDANT LINER: Yes, sir.

25 THE COURT: All right.

1 Ms. Barr, you've heard his resuscitation. Are
2 there any additional facts you would like to give me at this
3 time?

4 MS. BARR: Not at this time, Your Honor.

5 THE COURT: Is there anything that the family
6 members of Mr. York would like to say?

7 MS. BARR: Judge, I'm sure that there is. I would
8 ask, though, Your Honor, that since we have a jury waiting
9 that Mr. Liner be sentenced later. I'm sure that he will
10 want to offer his own witnesses in mitigation and I do
11 suspect that the members of the victim's family would want
12 to speak.

13 THE COURT: All right. Now, is there going to be
14 any -- I just want to make sure the record is clear. Is
15 there any deal or leniency or anything else that the State
16 has offered to Mr. Liner in order to have him enter these
17 pleas, other than the dismissal of the murder charge?

18 MS. BARR: Absolutely not, Your Honor.

19 MR. CARRAWAY: May I reiterate that, none. All
20 they said was we will drop the murder charge if he pleads
21 guilty to attempted armed robbery and conspiracy, but
22 they've made no mention at all about recommending anything.

23 THE COURT: All right. Of course, the State has
24 rested. He cannot be called in your case in chief. There
25 are -- you know, different rules apply for whether or not he

1 would be a reply witness, but he's not being offered
2 anything in exchange for testimony, is that right, Ms. Barr?

3 MS. BARR: That is correct.

4 THE COURT: Is that right, Mr. Carraway?

5 MR. CARRAWAY: That's correct.

6 THE COURT: All right. Right now -- well, excuse
7 me. Mr. Liner, I'm going to accept your plea and we'll
8 finalize the -- I will hear from the victim's family, then I
9 will hear from you and your lawyer and, of course, from Ms.
10 Barr later and I'll pass sentence some time today. But for
11 right now, you are going to be in the back in custody. I'm
12 going to request that Mr -- if he is taken to the jail that
13 he not be taken anywhere else and that he be made available
14 today for any other business in this court, including but
15 not limited to the sentencing in this -- with regard to this
16 plea. Okay. All right. I will accept his plea. It's
17 entered freely, voluntarily and with full knowledge of his
18 rights and he's satisfied with his attorney. And all in
19 all, I will accept the plea.

20 DEFENDANT LINER: Yes, sir.

21 THE COURT: Mr. Moseley, are you going to want to
22 call Mr. Pearson?

23 DEFENDANT MOSELEY: Yes, sir.

24 THE COURT: Okay. If you would stand, please, and
25 come forward and I will swear you in.

1 Raise your right hand and put your left hand on
2 the Bible.

3 (Whereupon, the Defendant was sworn.)

4 THE COURT: All right. Mr. Moseley, we've
5 reached the stage of the trial now where you may present
6 your defense. As we discussed yesterday, I'm going to go
7 over much of this, you have the right to claim the
8 protections given to you by the Fifth Amendment to the
9 United States constitution. That amendment states in
10 pertinent part that no person shall be compelled in any
11 criminal case to be a witness against himself. That means
12 that you cannot be required or forced to testify in this
13 case. You do have the right to testify in the case, but no
14 one can make you do that. Do you understand that?

15 DEFENDANT MOSELEY: Yes, sir.

16 THE COURT: And that is because the rights that
17 you have under the Fifth Amendment are personal rights.
18 Since they are personal rights, no one can give up those
19 rights except for you.

20 Now, if you decide to testify, as I mentioned to
21 you yesterday, you will be subject to the same general rules
22 that govern the direct and cross-examination of any other
23 witnesses in this case. You may be examined and
24 cross-examined on any relevant issues in the case. And in
25 addition, if you have any convictions for crimes that

1 involve dishonest or false statement and the conviction or
2 your release from confinement occurred less than 10 years
3 ago, then those convictions can be introduced solely, that
4 means only for the purpose of attacking your believability.
5 In addition to that, if you have been convicted of any
6 crimes where the punishment was potentially more than one
7 year in prison, those convictions can also be introduced if
8 I determine that the probative value of admitting that
9 conviction outweighs any prejudicial effect to you. Do you
10 understand that?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: All right. Now, if you decide to
13 testify, that decision on your part must be made freely,
14 voluntarily and intelligently with full knowledge of your
15 rights under the Fifth Amendment and with full knowledge of
16 the protections given to you by that amendment and you must
17 make the decision with full knowledge of the consequences of
18 your decision to testify.

19 If you decide not to testify, I will emphasize to
20 the jury that they cannot give that fact any weight
21 whatsoever. I will very specifically tell them they cannot
22 talk about it, they can't think about it and the fact that
23 you did not testify cannot enter into their decisions in any
24 way whatsoever and there's to be absolutely no prejudice to
25 you because you did not testify.

1 If you decide to testify, or for that matter, if
2 you decide to offer other evidence other than your own
3 testimony, I will tell the jury the fact that you testified
4 or that you offered other evidence that that does not mean
5 that you have assumed or taken on any burden of proving or
6 disproving anything. Do you understand that?

7 DEFENDANT MOSELEY: Yes, sir.

8 THE COURT: Now, in the end, it's left entirely up
9 to you. You may consult with your standby counsel. You may
10 just consult with family members subject to security
11 concerns in this courthouse, but in the end, the final
12 decision is left entirely up to you. Do you understand
13 that?

14 DEFENDANT MOSELEY: Yes, sir.

15 THE COURT: Now, do you understand everything I
16 have explained to you?

17 DEFENDANT MOSELEY: Yes, sir.

18 THE COURT: Do you have any questions about it?

19 DEFENDANT MOSELEY: No, sir.

20 THE COURT: Have you discussed with Ms. Butcher
21 and family members whether or not you will or won't testify?

22 DEFENDANT MOSELEY: I've discussed it with her and
23 she instructed me that after I present my case that I may in
24 order to present my documents from Philadelphia.

25 THE COURT: Now, again -- and that's bring up a

1 good point. Let's see that you haven't made up your mind
2 yet about whether or not you will testify or not.

3 DEFENDANT MOSELEY: (The witness nodded head.)

4 THE COURT: If you decide to present other
5 witnesses, you can make your final decision as to whether or
6 not you will or won't testify after you've presented your
7 last other witness. Do you understand that?

8 DEFENDANT MOSELEY: Yes, sir.

9 THE COURT: So you want to make your decision
10 after you present your other witnesses?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: And the -- the other witnesses, are
13 they present?

14 DEFENDANT MOSELEY: Yes, sir.

15 THE COURT: And are they ready to be called?

16 DEFENDANT MOSELEY: Yes, sir.

17 THE COURT: Are you going to want to talk to
18 Mr. Pearson?

19 DEFENDANT MOSELEY: Yes, I would like to speak
20 with him.

21 THE COURT: Are you going to want to talk with
22 Zachary Woods?

23 DEFENDANT MOSELEY: I have no knowledge of his
24 situation.

25 THE COURT: All right. I will give you a few

1 minutes to talk to Mr. Pearson.

2 DEFENDANT MOSELEY: Okay.

3 THE COURT: And I'm not going to ride you too hard
4 about that, but I'll give you about five minutes to talk to
5 him and if you need more time -- do you want Ms. Butcher in
6 there with you?

7 DEFENDANT MOSELEY: Yes, sir yes.

8 THE COURT: All right. We'll adjourn for that
9 purpose for five minutes.

10 (Whereupon, a short recess was held.)

11 THE COURT: Have a seat.

12 MS. BARR: Yes, sir.

13 THE COURT: Mr. Moseley, are you ready to go
14 forward?

15 DEFENDANT MOSELEY: Yes, sir.

16 THE COURT: Will you be calling any witnesses?

17 DEFENDANT MOSELEY: Yes, sir.

18 THE COURT: And in no particular order, I'm not
19 going to ask you in what order, but do you know how many you
20 will have approximately?

21 DEFENDANT MOSELEY: I'm going call Mr. Pearson
22 first since he's already back there.

23 THE COURT: Okay.

24 DEFENDANT MOSELEY: And call my parents and my
25 child's mother.

1 THE COURT: Okay. All right.

2 MS. BARR: Your Honor, may I deal with one matter
3 with regards to Mr. Pearson while the jury is still out?

4 THE COURT: (The witness nodded head.)

5 MS. BARR: I assume that he will testify
6 consistent with his statement to the FBI. If he doesn't --

7 THE COURT: Have you got a copy of that?

8 DEFENDANT MOSELEY: Yes, sir.

9 MS. BARR: And Judge, my only concern with regards
10 to the statement -- and I'll show it to Your Honor, is there
11 is a portion of the statement which Mr. Pearson references
12 hearing from somebody named Mike Fulton.

13 THE COURT: Mike Fulton?

14 MS. BARR: Yes, sir. He makes reference to a
15 statement -- receiving a statement after Tory York's murder.
16 It says Mike Fulton told Pearson that Pearson witnessed some
17 individual --

18 THE COURT: That Fulton witnessed.

19 MS. BARR: I'm sorry, Mike Fulton Pearson that
20 Fulton witnessed some individuals pay money to Marlin
21 McKnight, supposedly associated with York's murder. Tory
22 York's mother, Sandra York, knows Mike Fulton. So to the
23 extent that -- if testimony is offered in that regard, we
24 take the position that it's hearsay and I'd rather us deal
25 with that now while the jury is out than for Mr. Moseley to

1 ask him that question.

2 THE COURT: All right.

3 Mr. Moseley?

4 DEFENDANT MOSELEY: I mean, this whole trial --

5 THE COURT: You need to speak up for me.

6 DEFENDANT MOSELEY: I'm saying this whole trial is
7 based on hearsay of Lonnie Dozier, so how would this be --

8 THE COURT: Lonnie Dozier testified to what he
9 saw.

10 DEFENDANT MOSELEY: Yes, sir.

11 THE COURT: Not what anybody else told him that
12 happened.

13 DEFENDANT MOSELEY: Uh-huh.

14 THE COURT: Now, if you intend to have Mr. Pearson
15 testify that Mike Fulton told him that Mike Fulton witnessed
16 somebody pay money to Marlin McKnight, who is supposed
17 associated with York's murder, do you believe that is
18 hearsay?

19 DEFENDANT MOSELEY: I would like to utilize that.

20 THE COURT: All right. And again, we have to do a
21 proffer so the record can be protected. So I'm not going to
22 make any preliminary ruling on it because on the face of it
23 it appears to be hearsay because it would be offered to
24 prove what -- to prove the truth of the matter asserted in
25 the statement. If there is some exception to the hearsay

1 rule that you would like to argue or if there's some
2 argument that you have that this is not hearsay, then that
3 may well be arguable, I don't know. We'll have to bring
4 Mr. Pearson out and for him to make the proffer.

5 So bring Alphonso Pearson into the courtroom,
6 please.

7 And while he's coming out, is there anything else
8 in here you want to take issue with, Ms. Barr.

9 MS. BARR: No, sir, Your Honor.

10 THE COURT: Mr. Moseley, let me have your
11 attention for just a minute. What I intend to tell the jury
12 about Mr. Liner, I'm not going to tell the jury that he's
13 entered a plea. I'm not going to tell them anything that
14 Mr. Liner is no longer -- that the charges against Mr. Liner
15 are not something that this jury is going to have to resolve
16 in this trial any further.

17 Does the State object to that?

18 MS. BARR: No, sir, Your Honor.

19 THE COURT: Mr. Moseley?

20 DEFENDANT MOSELEY: No, sir.

21 THE COURT: I'm not going to tell them that he's
22 pled. I'm not going to tell them anything that he said.

23 All right. Is he coming?

24 BAILIFF: He's coming.

25 THE CLERK: Place your left hand on Bible raise

ALPHONZA PEARSON DIRECT BY MR. MOSELEY

1 your right hand.

2 THEREUPON,

3 ALPHONZA PEARSON

4 after having been duly sworn, testified as follows:

5 THE COURT: And you are Alphonza Pearson?

6 THE WITNESS: Yes, sir.

7 THE COURT: Have a seat right over here, sir

8 (indicating). And when you do have a seat, state your full
9 name, spell your first name and your last name. And that
10 black thing right there is the microphone, just get as close
11 to it as you can. All right. Your name?

12 THE WITNESS: Alphonza Pearson, first name is
13 A-L-P-H-O-N-S-O, Pearson, P-E-A-R-S-O-N.

14 THE COURT: Okay. Mr. Moseley, you can question
15 the witness outside the presence of the jury.

16 DIRECT EXAMINATION

17 BY DEFENDANT MOSELEY:

18 Q. Do you remember the sworn affidavit that you gave to
19 Mr. Flamini on April the 23rd, 2003? Do you want to
20 see it?

21 A. Yes, I would like to see it.

22 THE COURT: Your microphone is on, right, Mr.
23 Moseley, right in front of you? Slide it out toward me a
24 little bit. There you go, it will pick up your voice
25 better.

ALPHONSO PEARSON CROSS BY MR. BARR

1 All right. Go ahead.

2 Oh, you need to read it, sir?

3 THE WITNESS: I'm reading it.

4 THE COURT: Okay.

5 He can go ahead.

6 All right. Mr. Moseley.

7 BY DEFENDANT MOSELEY:

8 Q. You attested that you was -- you were informed by Mr.

9 Mike Fulton that Mr. Marlin McKnight was paid?

10 A. You said I request that from who?

11 Q. You attested that Mike Fulton informed you that Marlin

12 McKnight was paid?

13 A. That's what I heard, sir, yes, sir.

14 Q. Yeah.

15 A. Said he was paid to do that crime that was committed,

16 yeah.

17 Q. Did you speak with the victim before his death?

18 A. Yes, I did.

19 Q. And what did he, actually, say to you?

20 A. He had told me that he had gotten the word earlier that

21 day that someone was by his house looking for him to

22 kill him.

23 Q. And who was those people supposed to be?

24 A. At the time, the two names that I got was Don Burgess

25 and Marlin McKnight.

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 Q. What else did he say?

2 A. Basically, that was all. And I left him at his house.

3 We was supposed to get back up later that night, but

4 that's when he got killed.

5 Q. Okay. That will be all.

6 THE COURT: Ms. Barr, any questions?

7 CROSS-EXAMINATION

8 BY MS. BARR::

9 Q. Sir, do you have any personal knowledge of who shot
10 Tory York in terms of you, actually, seeing it or being
11 there?

12 A. I haven't seen it, but after he got killed, the name
13 that came across was Mr. Arthur Moseley, the one that
14 take it on his own behalf and go over there and done
15 that and that's what happened.

16 Q. Did you ever talk to Mr. Moseley personally about the
17 murder?

18 A. No, ma'am.

19 Q. Okay.

20 A. Matter of fact, this is the first time I ever seen him.

21 Q. Okay. So the information that you have as it relates
22 to the crime is based on what other people told you?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. BARR: That's all -- well, beg the Court's

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 indulgence. That's all the questions I have. Thank you.

2 THE COURT: Mr. Moseley, any follow-up questions
3 while the jury is out?

4 REDIRECT EXAMINATION

5 BY DEFENDANT MOSELEY::

6 Q. Did you hear about Corey Liner's name being involved?

7 A. Yes, I did.

8 Q. And what was his involvement?

9 A. He was with -- at the time, before he got killed, he
10 was at the house, too, with Don Burgess at the time.

11 Q. He was with Don Burgess?

12 A. Yes, sir. But later on after he got killed, your name
13 came up from the individual that gave y'all the gun to
14 do the killing. Said that y'all two went by the house
15 and he let y'all have the gun to do the killing with.

16 Q. Okay.

17 A. Steve Durant.

18 Q. But before that, you stated that --

19 A. Those were the only two names that I had that had been
20 by the house at the time.

21 Q. Don Burgess, Corey Liner went by the house looking for
22 him?

23 A. Yes, at the time.

24 Q. That's all.

25 THE COURT: Ms. Barr, do you have any objections?

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 MS. BARR: Judge, I would, obviously, object to
2 any hearsay testimony about what somebody told him. I
3 also -- what the victim may have told him earlier that day,
4 I don't think that there's any exception under the hearsay
5 rule that would permit what the victim purportedly stated to
6 him earlier in the day.

7 THE COURT: I think the case law is that he can
8 testify the victim said he was afraid, but --

9 MS. BARR: State of mind.

10 THE COURT: -- not who he was afraid of.

11 MS. BARR: I think you're right, Judge, state of
12 mind. I think you're right.

13 THE COURT: All right. Now, obviously, the
14 witness has given testimony that arguably helps and hurts
15 Mr. Moseley, but your objection overall is that none of it
16 is admissible except as to hearsay -- except that state of
17 mind exception?

18 MS. BARR: Yes, sir, Judge, I think, obviously, it
19 would have to cut both ways. I can't ask that the part that
20 he had about indicating Mr. Moseley coming in, but the part
21 he heard about somebody else being involved comes in, so I
22 would think it would be all be objectionable.

23 THE COURT: Mr. Moseley, do you have any response
24 to her objection?

25 DEFENDANT MOSELEY: Yes, sir. I object to that

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 because it, clearly, states Corey Liner just made the plea
2 that him and the victims are best friends. He just attested
3 the victim himself said that Don Burgess and Corey Liner
4 came by the house and he was scared of him. This is what he
5 just stated.

6 THE COURT: Well, he didn't --

7 DEFENDANT MOSELEY: Did --

8 THE COURT: Wait just a second, sir.

9 To the extent it's admissible, sir, did you say
10 that he was afraid of Corey Liner or did he tell you he was
11 afraid of Corey Liner?

12 THE WITNESS: He didn't say he was afraid, he just
13 say that everybody was looking for him earlier that day.

14 THE COURT: Who did he say that he heard was
15 trying to kill him?

16 THE WITNESS: It was Corey Liner and Don Burgess
17 at the time they had been by his house.

18 THE COURT: Okay.

19 Anything else you would like to tell me?

20 DEFENDANT MOSELEY: No, sir, I would just like for
21 this to submitted in front of the jury, that's it.

22 THE COURT: All right. How about the testimony
23 that this witness also heard that --

24 DEFENDANT MOSELEY: After --

25 THE COURT: Wait, wait just a second. That this

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 witness also heard after the murder that you stepped in and
2 did it yourself, is that admissible?

3 DEFENDANT MOSELEY: I mean, if he would like to
4 present that the jury, so be it. He has the right to.

5 THE COURT: All right.

6 Ms. Barr, it's your objection, is there anything
7 you would like to say before I rule?

8 MS. BARR: Judge, obviously, the State wants a
9 fair trial and we want a clean trial and I think all of it
10 is inadmissible to hearsay.

11 THE COURT: Okay. Now, the hearsay rule is that
12 testimony or evidence is hearsay if it's offered to prove
13 the truth of the matter asserted. Now, I will not allow
14 this witness to testify what Mike Fulton told him or what
15 any one else told him. That is my overall ruling because it
16 is hearsay because it is offered to prove the truth of the
17 matter asserted. There are no exceptions that apply except
18 I will allow the witness to testify that under rule 803(3)
19 that Mr -- well, let me back up.

20 Did Mr. York tell you he was afraid or what was
21 his state of mind --

22 THE WITNESS: He didn't --

23 THE COURT: Wait a minute. When the people had
24 been by his house?

25 THE WITNESS: He didn't say he was afraid, but the

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 way he was talking, I could tell he was afraid about it.

2 THE COURT: All right. I will allow the witness
3 to testify that Mr -- Mr. York appeared afraid the day of
4 the murder, but I'm not going to allow any testimony or any
5 questions designed to elicit who he was afraid of. That is
6 the hearsay rule. So that is my ruling.

7 Okay. Mr. Moseley, what you have done under the
8 rules is you have made a proffer in order for this testimony
9 to be preserved in the event of any appeal. The testimony
10 you wanted in has been preserved, but to be sure, are there
11 any other questions you would be asking this witness?

12 DEFENDANT MOSELEY: No, I just ask that the
13 testimony be preserved, but I don't want for him to testify
14 in front of the jury.

15 THE COURT: So you will not be calling him for any
16 other evidence?

17 DEFENDANT MOSELEY: No, sir.

18 THE COURT: All right.

19 You can step down, sir. Do you want him released
20 to do back to the facility he is incarcerated in?

21 DEFENDANT MOSELEY: He can be released, sir.

22 THE COURT: All right. Thank you, sir. You're
23 free to go.

24 Thank you, gentlemen. I apologize for you coming
25 all this way.

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 All right. Mr. Moseley, will you have any
2 additional witnesses?

3 DEFENDANT MOSELEY: Yes, I would like to call my
4 mother, Gloria Smith.

5 THE COURT: Okay. We'll do that as soon as the
6 jury comes in, okay. You ready for the jury, Mr. Moseley?

7 DEFENDANT MOSELEY: Yes, sir.

8 THE COURT: All right. You can bring them in.

9 Mr. Moseley, do you have any motions to make,
10 directed verdict motions on any of these charges?

11 DEFENDANT MOSELEY: Yes, sir. I would like to
12 renew all my motions and objections previously presented on
13 motion to dismiss and in the alternative mistrial for the
14 case being 13 years old, having requested documents from the
15 State they said they turned over to my prior attorney,
16 Verdell Barr, which I showed you documents and attested that
17 me and him had a conflict and these documents were never
18 received. Also, the investigator has been unable to locate
19 certain files that my attorney and he's been requested from.
20 Now, the documents -- the documents from the hospital for
21 Philadelphia, they do exist. Some of them are in storage,
22 but the ones that I have, though, attest being after the
23 fact and some being before the fact. So it's not my fault
24 that he lost them or whatever happened to the documents that
25 he had for that certain date.

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 THE COURT: You're talking about Mr. Barr?

2 DEFENDANT MOSELEY: Yes, sir. Yes, sir.

3 THE COURT: Okay.

4 DEFENDANT MOSELEY: And I would like to move for a
5 directed verdict due to the fact that Mr. Lonnie Dozier
6 perjured himself and the State knowing this. Also, have the
7 documents in Philadelphia establishing before, during and
8 after the fact of the crime and as well as alibi testimony
9 that's about to be presented. Also, that Mr. Willie
10 Chandler, clearly, saw two people in the car -- one guy on
11 the passenger side with gold teeth and dreads down to his
12 shoulder. He was behind the car and in 10 seconds says
13 shots. No one else got out the car.

14 Now, Dozier said I was handed the gun -- I was
15 handed the gun, but -- in his transcript, but on the stand,
16 Liner was handed the gun during -- during the incident.

17 THE COURT: You're talking about the statement to
18 Agent Flamini?

19 DEFENDANT MOSELEY: Yes, sir.

20 THE COURT: Is Mr. Flamini here?

21 MS. BARR: Yes, sir, he's right behind me, Your
22 Honor.

23 THE COURT: Okay.

24 DEFENDANT MOSELEY: So too many inconsistencies
25 for a reasonable jury can find for the State. No evidence

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1 points toward me and what is -- what points towards me is
2 the hearsay of a proffer deal from Lonnie Dozier. And
3 there's no weapon, no bullets, no forensic evidence
4 connecting me to the crime. I'm also charged with
5 possession of a weapon. The State, clearly, has no weapon,
6 sir.

7 THE COURT: All right. Ms. Barr.

8 MS. BARR: Your Honor, there has been testimony
9 from an eyewitness who was there at the time the crime was
10 committed. He gave testimony, that's Mr. Lonnie Dozier,
11 that there was talk by Steve Durant, Arthur Moseley and
12 Corey Liner about robbing the victim, Tory York, of drugs.
13 Mr. Dozier then testified that Steve Durant gave a .38
14 caliber revolver to Mr. Liner. They drove to the victim's
15 house and discussed -- he and the victim had a conversation.
16 He also discussed that during that period in time is when
17 the Defendant got out of the car, shot the victim, fired
18 several times. He said three to four times, he thought.
19 And, obviously, there's been testimony that the victim died
20 as a result of the gunshot wound or wounds.

21 THE COURT: Is there any evidence of an attempted
22 armed robbery?

23 MS. BARR: Yes, sir. Judge, the State would
24 submit that the attempt occurred after the conversation.
25 And it was more than just simply a conversation, they,

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 actually, got the gun, then they went over to the victim's
2 house with that gun. Judge, it's the State's theory that
3 Mr. Liner was the one who was trying to attempt to distract
4 the victim so that the Defendant could come and rob him --

5 THE COURT: I understand.

6 MS. BARR: -- an went -- rode and shot him.

7 THE COURT: I understand that, but doesn't there
8 have to be some overt act -- I think the law is that there
9 has to be some act of attempting to rob him. There is
10 evidence that Mr. Liner got out of the car empty-handed,
11 talked to he victim, got back in the car.

12 MS. BARR: Yes, sir.

13 THE COURT: And there's evidence that Mr. Moseley
14 then got out of the car after the getting the pistol off of
15 the armrest and went around and just shot him. Is there any
16 evidence that Mr. Moseley attempted to rob him?

17 MS. BARR: Judge, I think the overt act would be
18 the driving over there for the sole purpose -- based on
19 what's the evidence in the record the sole purpose of going
20 to the victim's residence at that time, period. And I
21 believe that the overt act was on the part of Mr. Corey
22 Liner and, also, Mr. Arthur Moseley, who at various points
23 in time, based on the record, of course, had possession of a
24 .38 caliber pistol. And so, Judge, we would submit that
25 once you have a plan and you do any act to carry out that

ALPHONSO PEARSON REDIRECT BY MR. MOSELEY

1 plan, including driving to the victim's home, getting out of
2 the vehicle and pointing the gun at the victim, that's
3 sufficient in and of itself to be an overt act in further of
4 the conspiracy to rob.

5 THE COURT: Okay. Conspiracy, I --

6 MS. BARR: Yes, sir.

7 THE COURT: I'm talking about the attempted armed
8 robbery.

9 MS. BARR: Yes, sir.

10 THE COURT: Okay. I will think about that later.

11 Mr. Moseley, anything else you would like to put
12 on the record as far as your directed verdict motion --

13 Ms. Barr, I'm sorry.

14 MS. BARR: And also, Judge, if I also note that
15 Mr. Dozier testified that the victim said as he was backing
16 away, you don't have to do it like that. So I think that
17 that is circumstantial evidence that there was an attempt to
18 rob.

19 THE COURT: All right.

20 Mr. Moseley?

21 DEFENDANT MOSELEY: Sir, there's several different
22 statements given to Mr. Flamini, which I will put him on the
23 stand, attesting two different versions from Mr. Dozier and
24 Mr. Liner.

25 THE COURT: Mr. Liner -- he can't be questioned on

GLORIA SMITH DIRECT BY MR. MOSELEY

1 what Mr. Liner said.

2 DEFENDANT MOSELEY: Okay.

3 THE COURT: That's hearsay.

4 DEFENDANT MOSELEY: That's hearsay, but --

5 THE COURT: Unless it falls within some exception
6 or you can convince me it's not.

7 DEFENDANT MOSELEY: Okay. Both of them said that
8 Liner drove the car. In one statement, one says I was in
9 the passenger side of the car.

10 THE COURT: What is I, you or them?

11 DEFENDANT MOSELEY: Yeah, I. One version is Corey
12 or is Dozier's due to the transcript --

13 THE COURT: I understand that, but I'm not going
14 to base a motion to dismiss on evidence that has not come in
15 yet. I'm talking about based on the evidence at this point,
16 do you have any other comments as to why you're entitled to
17 a directed verdict, which means a dismissal of any charge?

18 DEFENDANT MOSELEY: Yes, because all their case is
19 based on hearsay. And for six years, it was based on
20 somebody else until the proffer deal of Lonnie Dozier.

21 THE COURT: I going to respectfully at this point,
22 Mr. Moseley, deny your motions. You will have a chance to
23 make those at the end of all the evidence, okay?

24 You can bring in the jury.

25 (Whereupon, the jury returned to the

GLORIA SMITH DIRECT BY MR. MOSELEY

1 courtroom at 11:11 a.m.)

2 THE COURT: All right. We're ready to move
3 forward, ladies and gentlemen. As you've heard, the State
4 has rested. You will also note that Mr. Liner and his
5 counsel are not in the courtroom any longer. The -- any
6 charges lodged against Mr. Liner as a result of any facts
7 presented by the State, there are not an issue for you to
8 determine any longer.

9 I will now address Mr. Moseley and ask if you have
10 any witnesses you would like to call, sir?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: All right.

13 DEFENDANT MOSELEY: I would like to call Gloria
14 Smith, sir.

15 THE COURT: All right. Ms. Smith, come forward
16 right there, please, ma'am.

17 THEREUPON,

18 GLORIA SMITH,
19 after having been duly sworn, testified as follows: -

20 THE CLERK: Okay. Please have a seat, please,
21 ma'am.

22 THE COURT: Your name is Gloria Smith?

23 THE WITNESS: Yes..

24 THE COURT: Okay. Mr. Moseley.

25 DIRECT EXAMINATION

GLORIA SMITH CROSS BY MS. BARR

1 BY DEFENDANT MOSELEY:

2 Q. Ms. Gloria Smith, would you attest to the jury what is
3 your relationship to me?

4 A. I am Gloria Smith and I am your mother.

5 Q. Do you recall me going to Philadelphia in 2000?

6 A. Yes, I recall you going to Philadelphia several times
7 in 2000. You, actually, moved there and was living
8 there with my sister along with myself for a period of
9 time.

10 Q. What was the reason for this?

11 A. You went to the hospital because you were sick. You
12 were in and out of the psychiatric hospital. You were
13 mental then. You are mental now. And this whole
14 situation and you were a victim yourself. You're
15 mentally ill --

16 MS. BARR: Judge, we're going to object to that.

17 THE COURT: Ma'am, you have to answer the
18 questions that he ask you. And the question was do you
19 remember if he was Philadelphia in 2000. Okay?

20 THE WITNESS: Yes.

21 THE COURT: Mr. Moseley, you can continue.

22 BY DEFENDANT MOSELEY:

23 Q. Was I able to take care of myself at that time?

24 A. No, you wasn't.

25 Q. So from 2000, I was in Philadelphia until when did I

GLORIA SMITH CROSS BY MS. BARR

1 come back? Could you give an estimate?

2 A. It's been 13 years, but you came back in 2001, around
3 April or May, but there were periods when you were in
4 and out because we had death in the family and you came
5 to the funeral. I can't remember exact date, but I
6 knew you were up there due to your mental illness, in
7 and out of the hospital.

8 DEFENDANT MOSELEY: That will be all, sir.

9 THE COURT: Any questions, Ms. Barr?

10 MS. BARR: Yes, sir.

11 CROSS-EXAMINATION

12 BY MS. BARR:

13 Q. Ms. Smith, you live in the White Oak community?

14 A. Where our family house is, yes.

15 Q. Did you ever live there?

16 A. Yes.

17 Q. From what period of time to what period of time?

18 A. I moved there in 1987.

19 Q. Yes, ma'am.

20 A. And I went away for a period in 2005.

21 Q. Where did you go?

22 A. To Philadelphia.

23 Q. Okay. So you were there from 1987 until 2005?

24 A. Yes.

25 Q. All right. And then in 2005, you moved to

GLORIA SMITH CROSS BY MS. BARR

- 1 Philadelphia?
- 2 A. Correct.
- 3 Q. And when did you come back?
- 4 A. I've always come back. I've never left here
- 5 permanently. I've always been back and fourth,
- 6 especially during the time when he was going to trial
- 7 and sick.
- 8 Q. I'm sorry?
- 9 A. I've been coming back and forth the whole period.
- 10 Q. Okay. All right. Now, of course, you're not here to
- 11 tell this jury that on March the 23rd of 2001 that your
- 12 son was not in the State of South Carolina? You're not
- 13 saying that, are you?
- 14 A. Well, I'm checking the dates.
- 15 Q. Okay.
- 16 A. I didn't have time to prove the date as to where I was
- 17 or he was at that time because I just found out about
- 18 it a couple of days ago.
- 19 Q. But --
- 20 A. I didn't have time to get proof of anything --
- 21 Q. I understand that.
- 22 A. I'm trying to get all of that evidence as far as I'm
- 23 concerned.
- 24 Q. But Ms. Smith, now, your son is facing a murder charge,
- 25 right?

GLORIA SMITH CROSS BY MS. BARR

1 A. I understand that.

2 Q. And he's been face that charge for the last eight
3 years, hasn't he?

4 A. He has been charged with it for the past eight years,
5 just --

6 Q. And, certainly -- I'm sorry. Go ahead.

7 A. He has been charged for the past eight years, but it's
8 a 13-year-old crime and there is some evidence that was
9 not presented into this trial as defense on my son's
10 behalf.

11 Q. All right.

12 A. He was living with my sister. I could have gotten her
13 here to testify as to whether he was, to check the
14 dates --

15 Q. All right.

16 A. -- if I had time to do that. See, I did not have --
17 you bring all of this evidence against my son --

18 Q. Ms. Smith --

19 A. -- and everything is aiming totally toward him with his
20 mental illness when you didn't give him a chance or us
21 time to get the information that we needed in evidence
22 for him.

23 Q. Are you finished?

24 A. Well, not really. I have a whole lot more to say, but
25 --

GLORIA SMITH CROSS BY MS. BARR

1 Q. I'm sure you do, but you have to just answer the
2 question that I ask you.

3 A. Well, I am answering the question that you ask me.

4 Q. All right.

5 A. And like I said, I did not have time to get the exact
6 date as to when he was in and out of the hospital. And
7 if Corey -- according to Corey --

8 MS. BARR: Judge, at this point --

9 THE COURT: Ma'am?

10 MS. BARR: At this point, Judge, I'm going to ask
11 the Court to admonish the witness to just answer my
12 question.

13 THE COURT: Okay. You'll have to answer the
14 question, please, ma'am.

15 All right. Go ahead, Ms. Barr.

16 MS. BARR: Thank you.

17 BY MS. BARR::

18 Q. Ms. Smith, you don't think that eight years is
19 sufficient time to try to get proof --

20 A. Well, he's had a lawyer for the past eight years --

21 THE COURT: Let her finish the question.

22 BY MS. BARR:

23 Q. You don't think that that's sufficient time to get
24 evidence your son was not in the State of South
25 Carolina during the month of this murder? You don't

GLORIA SMITH CROSS BY MS. BARR

1 think that was sufficient time?

2 A. Well, like I said, I was about to say, he had an
3 attorney --

4 Q. Okay.

5 A. -- ever since this happened --

6 Q. Well, he's, actually had --

7 A. -- and his attorney was just deceased a couple of
8 months ago, so as he said and I'm saying, too, there
9 are evidence that his former attorney --

10 THE COURT: All right. Ma'am, you have to answer
11 the question.

12 THE WITNESS: There was evidence that his attorney
13 had that we don't have at this moment.

14 BY MS. BARR::

15 Q. Ms. Smith, your son has had three lawyers, hasn't he?
16 He's had Mr. Verdell Barr, the first time, right?

17 A. Correct.

18 Q. He's had Ms. Amanda Shuler the second time, right?

19 A. Yes.

20 Q. And he's had Ms. Debra Butcher the third time, right?

21 A. Within the past year, they've only came --

22 Q. Okay. Three attorneys --

23 A. -- this past year. Also, my son was incarcerated for a
24 year. So he didn't have a way of getting all of this
25 information. He's up here trying to represent himself

GLORIA SMITH CROSS BY MS. BARR

1 because he feel that he was not getting the proper
2 representation from the attorney that he had after
3 Mr. Barr got off of the case.

4 Q. Okay. So --

5 A. So now, you're trying to take everything now --

6 THE COURT: All right.

7 THE WITNESS: -- and put it off --

8 THE COURT: Ma'am, you answer the question and
9 then she'll ask the next question.

10 Go ahead, Ms. Barr.

11 BY MS. BARR:

12 Q. So, ma'am, he was satisfied with the services of his
13 other three lawyers, so he's elected to represent
14 himself, correct? Is that what you're telling us?

15 A. No. First of all, there was not a problem with
16 Mr. Verdell Barr. He took himself off of the case.

17 Q. Okay.

18 A. It was only a --

19 Q. Let me ask you this --

20 A. -- problem as far as attorney goes for the past year
21 while he was incarcerated as to the attorneys that you
22 all appointed him.

23 Q. Let me ask you this --

24 A. There was not a problem with Mr. Barr.

25 Q. Ma'am, that's fine. Let me ask you this. Now, Arthur

GLORIA SMITH CROSS BY MS. BARR

- 1 Moseley had -- in 2001 was dating a girl in Florence,
2 right?
- 3 A. Correct.
- 4 Q. And her name is Yolanda, I think it's Britt?
- 5 A. Correct.
- 6 Q. And in 2001, he would sometime drive her car?
- 7 A. He wasn't supposed to, he didn't have a license.
- 8 Q. That's not my question. My question is in 2001, he
9 would sometimes drive her vehicle?
- 10 A. I can't answer that because I don't know. I've never
11 seen him drive it.
- 12 Q. You know she has a black Pontiac Grand Am?
- 13 A. No, she doesn't have a black Pontiac Grand Am.
- 14 Q. She didn't have a Pontiac Grand Am?
- 15 A. She had a Pontiac, but I'm sure it's not black.
- 16 Q. In 2001?
- 17 A. Correct.
- 18 Q. Okay. Now, is it your testimony before this jury that
19 from late 2000 until April or May of 2001 that Arthur
20 Moseley was in the state of Philadelphia?
- 21 A. No, that's not what I'm saying. I'm saying that in May
22 or April of 2001, he came back to South Carolina.
- 23 Q. All right. So --
- 24 A. Not Philadelphia.
- 25 Q. Well, that's what I said. So from the end of 2000, say

GLORIA SMITH REDIRECT BY MR. MOSELEY

1 December of 2000 until, at least, April, no earlier
2 than April of 2001, you follow me?

3 A. Yes.

4 Q. He was in the state of Philadelphia the entire time, is
5 that your testimony?

6 A. I didn't say the entire time. I told you before it was
7 a back and forth thing, but he was up there -- I took
8 him up there myself.

9 Q. Okay. So he was back and forth between the state of
10 Philadelphia and the state of South Carolina, correct?

11 A. Correct.

12 Q. Now, you know Corey Liner?

13 A. I know Corey Liner quite well.

14 Q. All right. And Corey Liner and Arthur used to hang out
15 together, didn't they?

16 A. Well, not really hang out. Corey Liner was not really
17 friends with Arthur. Actually, he was an enemy of my
18 children because he came into my home when his family
19 put him out and I took him in.

20 Q. All right. What about Lonnie Dozier, was he --

21 A. I don't know Lonnie Dozier very well.

22 Q. Now, have you heard people refer to you by the nickname
23 of Glow?

24 A. Of course.

25 Q. Okay. All right. Okay. Ma'am, this mental illness

GLORIA SMITH REDIRECT BY MR. MOSELEY

1 that you say your son has, that's caused you to be
2 concerned about him at times, hasn't it?

3 A. Of course, I am.

4 Q. And that's caused him to be violent at times, hasn't
5 it?

6 A. He's schizophrenic, may have.

7 Q. That caused him to be violent at times, hasn't it?

8 A. Yes.

9 MS. BARR: That's all the questions I have. Thank
10 you.

11 THE COURT: Redirect, Mr. Moseley?

12 REDIRECT EXAMINATION

13 BY DEFENDANT MOSELEY:

14 Q. So it's your testimony that I returned April or May of
15 2001?

16 A. Correct.

17 Q. Okay. Back to Mr. Corey Liner, what was the
18 relationship with me and Corey Liner? How did he get
19 involved with the Moseley family would you, please,
20 testify?

21 A. His family put him out and I took him in. He stayed at
22 our house for a period of time. And then they were
23 incidents involving you where there were a car that you
24 were driving and Corey wrecked it and you got blamed
25 for it, so this is not the first time that Corey blamed

GLORIA SMITH REDIRECT BY MR. MOSELEY

1 something for you and you went to prison for it and
2 Corey's been walking around and didn't get any -- was
3 not charged with the crime. You took the crime.

4 Q. And speaking of that incident when me and him went to
5 Hemingway and got locked up in the county jail?

6 MS. BARR: Judge, we're going to object to this at
7 this point based on relevant, Your Honor.

8 THE COURT: All right. Overruled.

9 BY DEFENDANT MOSELEY:

10 Q. So we speaking on that time, right, that's when I came
11 back?

12 A. Yes.

13 Q. 2001?

14 A. Yes.

15 Q. And then I ended up in the county jail --

16 MS. BARR: Objection as to leading, Your Honor.

17 THE COURT: Don't lead. In other words, you can't
18 suggest the answer to her on direct questioning. Okay.

19 MS. BARR: And Your Honor, it would be hearsay and
20 relevance.

21 THE COURT: All right. I will overrule those two
22 objections, but you may not lead her, okay?

23 BY DEFENDANT MOSELEY:

24 Q. Isn't it true that due to that incident that I took
25 that rap for that blue light charge, I was in the

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 county jail from 2001 to 2002 for approximately 11
2 months?

3 MS. BARR: Objection, same objection.

4 THE COURT: That's leading, sir.

5 DEFENDANT MOSELEY: Okay.

6 THE COURT: You can ask her does she know when you
7 were in jail.

8 DEFENDANT MOSELEY: Okay.

9 BY DEFENDANT MOSELEY:

10 Q. Do you know when I went to jail pertaining to that and
11 how long?

12 A. No, I don't know the direct time or how long you been
13 in there, but I know you were in there. And after you
14 came back, you had another breakdown in 2001 where you
15 refused your medication and something happened and you
16 did go the jail. And I assume Corey was riding with
17 you again and you were caught.

18 Q. Okay. Do you consider Corey Liner trustworthy?

19 A. No, he's not.

20 MS. BARR: Objection, Your Honor.

21 THE COURT: Sustained.

22 MS. BARR: Your Honor, we would ask --

23 THE COURT: Wait a second. Y'all come on up,
24 please.

25 (Whereupon, a bench conference was held

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 off the record, in the presence of the
2 jury, but out of the hearing of the
3 jury.)

4 THE COURT: All right. The objection is
5 sustained.

6 You can continue, Mr. Moseley.

7 BY DEFENDANT MOSELEY:

8 Q. Just one more question, again, so you state the end of
9 2000 to approximately April or May of 2001, I was in
10 Philadelphia?

11 A. Yes.

12 DEFENDANT MOSELEY: No further questions, Your
13 Honor.

14 THE COURT: Recross, Ms. Barr?

15 MS. BARR: No, Your Honor.

16 THE COURT: All right. You can step down, ma'am.
17 Thank you.

18 Next witness, Mr. Moseley.

19 DEFENDANT MOSELEY: I would like to call Mr.
20 Flamini.

21 THE COURT: Mr. Flamini.

22 THE CLERK: Please your left hand on the Bible and
23 raise your right hand.

24 THEREUPON,

25 VINCENT FLAMINI,

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 after having been duly sworn, testified as follows:

2 THE COURT: When you sit down, state your name and
3 spell your last name, okay?

4 THE WITNESS: Yes, sir.

5 My name is Vincent R. Flamini, last name is
6 spelled F-L-A-M-I-N-I.

7 DIRECT EXAMINATION

8 BY DEFENDANT MOSELEY:

9 Q. Mr. Flamini?

10 A. Yes, sir.

11 Q. Are you familiar with the statement that was given on
12 March the 9th, 2005, by Mr. Steve Durant to you? Or
13 would you like to see the document?

14 A. Which date.

15 Q. March the 9th, 2005?

16 A. I have a statement from Mr. Durant, it's not really a
17 statement, it's a summary on February 25th, 2005.

18 Q. And in that statement, what did he said about handing
19 someone a gun?

20 MS. BARR: Objection, Your Honor, calls for
21 hearsay.

22 THE COURT: All right. Let me -- hand that to me,
23 please, sir.

24 (Defendant Moseley's Exhibit No. f's

25 Exhibit / Defendant's Exhibit _ marked

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 for identification.) defendant Arthur
2 Moseley

3 THE COURT: All right. Ladies and gentlemen, if
4 would you, please, step to your jury room. You may not
5 discuss the case.

6 (Whereupon, the jury left the courtroom
7 at 11:30 a.m.)

8 THE COURT: I'm going to ask the deputy to hand
9 this back to Mr. Moseley. What we're going to do, Mr.
10 Moseley, is you can ask the witnesses the questions you
11 would like to ask and then Ms. Barr can do the same and then
12 I'll hear any objections from the State.

13 BY DEFENDANT MOSELEY:

14 Q. In Mr. Durant's statement, did he ever provide anyone
15 with a gun?

16 THE COURT: You can go ahead and read from the
17 statement why the jury is out Mr. Flamini.

18 THE WITNESS: Yes, sir.

19 This was the second time I talked to -- tried to
20 talk to Mr. Durant and he advised that he did not provide
21 anyone with a gun.

22 BY DEFENDANT MOSELEY::

23 Q. And what else did he state that he knew about the
24 murder incident?

25 A. He recalled that during the same week in 2001 that

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 Corey Liner and his girlfriend Dimetria Brown arrived
2 at the York's residence in Kingstree. Mr. Liner then
3 retrieved a sawed-off shotgun from the truck of Liner's
4 vehicle, a blue Chevy Monte Carlo, that was parked at
5 Durant's residence. And said the vehicle had been
6 parked there for about two weeks at that point in time.
7 He also agreed to submit to a polygraph examination,
8 which never occurred.

9 DEFENDANT MOSELEY: Okay. That will be all, sir.

10 THE COURT: All right.

11 Ms. Barr, do you have any questions, first of all?

12 MS. BARR: No, sir.

13 DEFENDANT MOSELEY: And your objection?

14 MS. BARR: That would be hearsay, Your Honor.

15 THE COURT: Mr. Moseley?

16 DEFENDANT MOSELEY: I don't think it would be
17 hearsay because Mr. Durant's not here to represent himself
18 and he attested to Mr. Flamini that he provided no one with
19 a gun. And my codefendants attest that he provided me with
20 a gun. And one of them said that I was never given a gun,
21 that -- Mr. Dozier stated on the stand that Liner was given
22 the gun. I mean, it's so many inconsistencies with it. But
23 Mr. Durant stated he gave no one no gun. So this is not
24 hearsay, this is his version and he's not here to represent
25 himself, sir.

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 THE COURT: Ms. Barr, anything else?

2 MS. BARR: Your Honor, obviously, as it relates to
3 the statement given by Steve Durant to Agent Flamini, most
4 importantly, it's self-serving. It's completely exploits
5 him from any connection with this homicide or attempted
6 robbery. So, Judge, we would take the position that it's
7 inadmissible hearsay.

8 THE COURT: All right. Again, the definition of
9 hearsay under Rule 801(c), hearsay is a statement made other
10 than by the declarant while testifying at the trial or
11 hearing offered in evidence to prove the truth of the matter
12 asserted.

13 Your question of the witness was to what
14 Mr. Durant told him for the purpose of proving what
15 Mr. Durant told him, is this correct?

16 DEFENDANT MOSELEY: Yes, sir, pertaining to the
17 weapon.

18 THE COURT: Right. That is offered to prove the
19 truth of the matter asserted, so it is hearsay. It is not
20 under any definition an exception to the hearsay rule. It
21 is, certainly, not under 801(d) an admission. And it is not
22 otherwise admissible under any hearsay exception and it is
23 not in any way not hearsay. So I will sustain the State's
24 objection. So that would conclude your questioning of the
25 witness in front of the jury as to what Mr. Durant told him.

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 Now, several times during the trial, you indicated
2 your desire to question him about what Mr. Dozier has said.
3 Now, under rule 613, that is a prior inconsistent statement.

4 Ms. Barr, would you have any objections to that?

5 MS. BARR: To him being questioned about that?

6 THE COURT: About Mr. Dozier's statements to him?

7 MS. BARR: No, sir.

8 THE COURT: All right. So I would allow you to
9 question the witness about what Mr. Dozier said. Of course,
10 if there's any objection that crops up during that
11 questioning, Ms. Barr can make it as she sees fit and then
12 I'll rule on it depending on my view of the law.

13 Are you clear on that, Mr. Moseley?

14 DEFENDANT MOSELEY: Yes, sir. One thing I don't
15 understand is this, Mr. Durant is not here to represent
16 himself and he made this sworn statement to him, but the
17 State is --

18 THE WITNESS: It was not a sworn statement, Your
19 Honor.

20 THE COURT: Was it a sworn statement, sir?

21 THE WITNESS: No, sir.

22 DEFENDANT MOSELEY: Well, he made the statement to
23 him he had no involvement with no gun. At the same time, I
24 feel with all due respect that you are being prejudice
25 towards me in favor of the State because here it is, she has

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 the proffer deal from Mr. Dozier stating that.

2 THE COURT: Well, you're going to get into that
3 with Mr. Flamini. And I agree with you --

4 DEFENDANT MOSELEY: Yes, sir.

5 THE COURT: -- that it is, certainly, a point to
6 explore that he was offered and received something in
7 exchange for information. You can get into that with this
8 witness as much as the rules permit. I am not prejudice for
9 the State. I think Ms. Barr can tell you that in many
10 instances in many trials she may have felt the exact
11 opposite way because I make my rulings based on what the law
12 is. I, certainly, don't play favorites. If I did, I think
13 it would fall 50/50 on both sides of the Defense and
14 prosecutor, I will tell you that. I won't to make sure that
15 you're afforded a fair trial. That does mean that you get
16 in all the evidence that you want because the rules apply to
17 everybody.

18 DEFENDANT MOSELEY: Uh-huh. But --

19 THE COURT: So I will just dismiss out of hand
20 your comment that I'm prejudice for the State because I'm,
21 certainly, not.

22 DEFENDANT MOSELEY: Okay. But do you understand
23 how I'm looking at being that I'm pro se, I'm not a
24 professional at this. They are stating that they have
25 witnesses stating that Durant did this, Durant did that, but

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 he's not here to attest what he did, but here's the
2 statement he said he had nothing do with it.

3 THE COURT: The reason Mr. Dozier was permitted to
4 do that is because Mr. Dozier claims, if the jury believes
5 him, that he was there, that Mr. Dozier was there.

6 Now, my ruling is that the statements pertaining
7 to what Mr. Durant told this person, Mr. Flamini --

8 DEFENDANT MOSELEY: Yes, sir.

9 THE COURT: -- are not admissible under hearsay.
10 You proffered those under the record and I think the record
11 is clear as to what you presented. Then you can move on to
12 any other topics that you want to move on to. And, again,
13 any objections that are made, I will recall on those
14 accordingly.

15 DEFENDANT MOSELEY: Okay.

16 THE COURT: So are you ready for the jury?

17 DEFENDANT MOSELEY: Yes, sir. I want to present
18 the Lonnie Dozier statement.

19 THE COURT: Okay. You can talk to him about that
20 next.

21 DEFENDANT MOSELEY: One more question, sir.

22 THE COURT: Yes, sir.

23 DEFENDANT MOSELEY: I have other statements even
24 though these -- the people that stated these statements
25 aren't here, can I ask him pertaining to that so we don't

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 have to put --

2 THE COURT: Again, it all depends on whether or
3 not they're hearsay. And if they are, whether or not there
4 an exception to the rule or there might be some other
5 objection the State has. I don't know what the statements
6 are. I don't know who the people are. So if you want to
7 question the witness about those, you can go ahead and do
8 that now.

9 DEFENDANT MOSELEY: Okay.

10 THE COURT: And first, let the witness know which
11 individual you're talking about, you might have a date or
12 something else he can refer to. And I might also add that
13 the fact the statement is sworn or not sworn really doesn't
14 matter insofar as whether it was an affidavit or not.

15 And while he's looking for those, I'm going to put
16 on the record the bench conference about Mr. Moseley's
17 question of his mother as to whether or not she thought Mr.
18 Liner was trustworthy. That would not be an appropriate
19 question since Mr. Liner has not testified and that the
20 question to ask would -- if he did was whether or not she
21 knew of his representation for truth and veracity in the
22 community. So I just wanted to make sure the record
23 reflected what my ruling was on -- the basis of my ruling
24 sustaining the State's objection.

25 All right. The next witness you want to ask him

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 -- or the next person you want to ask him about, Mr.

2 Moseley.

3 DEFENDANT MOSELEY: The two people that I wanted
4 to ask him about was Arlo Todd Fulton and Wakonda Cooper's
5 statement attesting they was present when Mr. Brockington,
6 who is deceased, paid Steve Singletary and -- Hammond
7 500-dollars to get a head hit.

8 THE COURT: You have those statements, sir?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. Arlo Todd Fulton and Wakonda
11 Cooper, you have those statements?

12 THE WITNESS: Okay. You can ask him about those.
13 I'll let you do it any way you want while the jury is out.

14 DEFENDANT MOSELEY: Can I be presented with those
15 documents because I don't have them on file? Do anybody
16 have any copies?

17 THE WITNESS: I have my copies.

18 THE COURT: Why don't you just read what they
19 said, sir.

20 Will that be okay?

21 DEFENDANT MOSELEY: Yes, sir. Yes, sir.

22 THE COURT: All right.

23 All right. Mr. Flamini, if you will tell us which
24 one you're referring to and then read from it.

25 THE WITNESS: Yes, sir. Okay. I, actually,

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 interviewed Arlo Fulton on --

2 THE COURT: Speak up just a little bit.

3 THE WITNESS: Okay. I interviewed Arlo Fulton on
4 these two occasions, first was on March 20th, 2002, second
5 was on March 26, 2002. On the first interview -- it's quite
6 lengthy, Your Honor, I'll summarize it the best I can.

7 THE COURT: Okay.

8 THE WITNESS: He -- Mr. Fulton said on the day
9 that Mr. Tory York was murdered, March 23, 2001, he was
10 in -- barber shop in Kingstree. Also, present were the
11 barber, Wakonda Cooper, Darrel Pressley and Tory York.
12 While they were there, York was talking about drugs, but
13 Fulton acted like he didn't know what he was talking about
14 and ignored him.

15 York was asking Fulton if he knew of anyone that
16 wanted to purchase powder cocaine or crack cocaine. Fulton
17 shook his head no. Fulton, Cooper, Pressley all left the
18 barber shop together. They wanted to get something to eat.
19 They went to -- in Kingstree. Pressley was driving at the
20 time, a Buick Regal or Buick Cutlass. They went -- then
21 went to the residence of Isaac Woods, also known as Bug.
22 About 3:00 or 3:30 that same day, Fulton caught a ride to B
23 store, got dropped off. Cooper had gone home because his
24 stepson was coming home from school. About an hour later,
25 Cooper arrived a B store. About 30 minutes after that,

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1 Brockington arrived at B store. Brockington was driving his
2 green Ford Expedition, which was approximately 5:00 to 6:00
3 p.m. that same day.

4 THE COURT: And what day was that, do you know?

5 THE WITNESS: That was the day of the murder,
6 which was March 23, 2001.

7 THE COURT: Okay.

8 THE WITNESS: After he arrived at the store,
9 Fulton got into the front passenger seat of Brockington's
10 vehicle, Cooper got into the back passenger seat.
11 Brockington, Fulton and Cooper drove to the liquor store in
12 Kingstree. On the trip to the liquor store, Brockington
13 stated that someone had stolen the stash of drugs. Fulton
14 felt that Brockington had received a call at work that
15 Brockington had checked on the stash of drugs and he found
16 the stash of drugs was gone. Brockington stated someone
17 stole his stash of drugs. He stated some did get me.

18 THE COURT: Someone did what?

19 THE WITNESS: Did get me.

20 THE COURT: Okay.

21 THE WITNESS: Brockington told Fulton and Cooper
22 that he was robbed of a half kilogram of cocaine. Fulton
23 and Cooper were driving with Brockington in his vehicle and
24 in the vehicle, Brockington was cursing about somebody
25 stealing his drugs. Brockington stated someone had told him

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1 about the missing drugs that he received a telephone call on
2 his job, that Tory York had quote unquote admitted taking
3 his stuff referring to his drugs.

4 At that time, Fulton told Brockington where Tory
5 York hung out, which was at a residence on Thorn Avenue in
6 Kingstree. Brockington then drove to the residence on Thorn
7 Avenue, which we believe to be the residence of Tory York.
8 When Brockington pulled his vehicle to the residence,
9 Brockington and Cooper got out of the vehicle and approached
10 the residence. Fulton stayed in the vehicle while at the
11 residence. Located on the front porch of the residence
12 was -- Chapman -- and Carlos York, Tory York's cousin. They
13 were other people there.

14 Fulton called the Chapman -- approached
15 Brockington's vehicle in order to talk with Fulton. After
16 Brockington and Cooper approached the car, York went into
17 the residence to get Tory York. Carlos York also sent
18 Chapman to get -- Chapman left the residence and came almost
19 immediately back to the residence with tory York. When
20 Chapman and Tory York got back to the residence, Tory York
21 was on the front porch of the residence. Fulton was
22 listening to music inside Brockington's vehicle. The had a
23 conversation. The conversation lasted about five minutes
24 and it was not heated in nature. Brockington and Cooper
25 then got back into Brockington's vehicle and Brockington

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1 stated, quote, somebody's damn lying, end quote. Cooper
2 made a comment to the effect that he did not know for sure
3 whether they were lying or not. Brockington then drove to
4 the liquor store where they all purchased some liquor and
5 then they drove back to B store.

6 According to Fulton, Brockington thought that Tory
7 York and Tony York must have stolen his drugs and that was
8 why Brockington said Tony York in addition to Tory York.
9 After leaving York's residence, Brockington was cursing and
10 stated that Tory York and Tony York stole his drugs.
11 Brockington speculated that they probably gave it to Carlos
12 York to sell because Carlos York knew how to work the drugs,
13 meaning he knew how to break the drugs in small amounts and
14 sell it. Brockington also thought that the Yorks were just
15 covering up for each other.

16 Approximately 7:15 p.m. or 7:30 p.m. that same
17 day, Fulton, Brockington and Cooper got back to the B store,
18 from the liquor store. The liquor store was -- store after
19 arriving back at B store, Fulton ordered some food and shot
20 pool.

21 Okay. For approximately one hour between 8:00 and
22 9:00 p.m, Fulton could not account for the whereabouts of
23 Brockington and Cooper since Fulton was not paying
24 attention. Fulton left the store about 9:00 p.m. with his
25 cousin, Andy McKnight. When he left the store,

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1 Brockington's vehicle was still at that location although
2 Fulton did not see Brockington or Cooper when he left.
3 Fulton went straight to a club known as Monkey Joe's with
4 McKnight. Approximately five to ten minutes after Fulton
5 arrived at Monkey Joe's club, Brockington, Cooper and
6 everyone who was at the B store showed up at Monkey Joe's
7 club. Fulton stayed at Monkey Joe's club until about 11:00
8 p.m. that night. That night, Fulton's girlfriend drove
9 Fulton home to his apartment when he left.

10 After arriving at Monkey Joe's club, Cooper went
11 in the back of the club and played cards. Brockington fell
12 asleep while sitting on a stool drinking Heineken beers.
13 Fulton picked up Brockington and put him on the bench inside
14 of Monkey Joe's club. According to Fulton, Monkey Joe heard
15 on the scanner about a shooting. Some individuals then came
16 in from a party and said that Tory York had been shot.
17 After Fulton found out about Tory York being shot,
18 Brockington said his pager went off and someone paged
19 Brockington -- residence so Brockington went home.

20 Brockington then came back later and stated the
21 police had been to his residence and asked him questions
22 about what happened regarding the murder of Tory York.
23 Brockington stated that the police wanted Brockington to
24 come down the next morning to get questioned at the police
25 station. At that time, Fulton knew the police were going to

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1 question Fulton, but Fulton was not worried. After Tory
2 York's murder, Brockington admitted to Fulton that
3 Brockington was robbed of a half kilogram of cocaine, that
4 the drugs were located at Brockington's residence in a tool
5 box that was padlocked. Brockington also told Fulton
6 that -- was talking to Brockington at work the day York was
7 murdered and told Brockington that Pengrass knew that
8 Brockington had gotten robbed of the drugs. This
9 occurred -- discover missing by Brockington. Brockington
10 also told Fulton that Don Burgess that Tory York has stole
11 his drugs. That's the first statement.

12 You want me to go over the second statement as
13 well?

14 THE COURT: All right.

15 DEFENDANT MOSELEY: Yes.

16 THE COURT: Let's -- you want to get into all that
17 with him?

18 DEFENDANT MOSELEY: No. The basic questions --

19 THE COURT: Let's get to basic questions because
20 we've --

21 DEFENDANT MOSELEY: Yeah.

22 THE COURT: That's too cumbersome a proffer to do
23 it the other way. All right. Go ahead.

24 PROFFER

25 BY DEFENDANT MOSELEY::

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1 Q. The basic question was -- and which statement is this,
2 is this -- or Wakonda?

3 A. This is Arlo Fulton, Todd Fulton.

4 Q. And he did attest that Steve Singletary was paid
5 500-dollars?

6 A. In that particular -- the first statement, he didn't
7 mention Steve Singletary, but then he -- I think it's
8 the second statement you're referring to.

9 Q. Okay --

10 A. Right.

11 Q. So, basically, like what I'm -- I just want to get to
12 Wakonda Cooper's statement and Todd Fulton's statement
13 attesting that they witnesses Mr. Brockington pay Steve
14 Singletary the money for the hit. That's, basically,
15 what I want to present to the jury.

16 THE COURT: The question outside the presence of
17 the jury is did either Mr. Cooper or Mr. Fulton tell you
18 that they saw Mr. Brockington pay Mr. Singletary
19 500-dollars?

20 Is that the question?

21 DEFENDANT MOSELEY: Yes, sir.

22 THE COURT: Is that -- can you answer that
23 question, please, Agent?

24 THE WITNESS: Yes, Your Honor. Okay. The
25 statement of Arlo Fulton on March 26, 2002, which is a

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1 summary, it's not a transcript or, as you say, attest. He
2 said that Brockington told Singletary that York and others
3 were sitting on the porch of York's residence. When
4 Brockington left the residence, Singletary responded yeah, I
5 think they sitting on the porch right now. I saw Tory and
6 them hanging out on the porch right now. Apparently,
7 Singletary -- York's presence prior to going to Young's Food
8 Store.

9 THE COURT: And he said what to whom again?

10 THE WITNESS: According to Mr. Fulton, this is
11 what Mr. Singletary stated, he said, yeah, I think they
12 sitting on the porch right now. I saw Tory and them hanging
13 out on the porch right now. And according to Arlo Fulton,
14 he said Brockington paid Singletary approximately
15 400-dollars or 600-dollars in cash. According to Fulton,
16 Singletary was known as a daredevil and he would do anything
17 if he's paid money. So he did -- he said he saw him pay 400
18 to 600-dollars in cash.

19 THE COURT: All right. And was there anything in
20 the statement as to why he paid him that?

21 THE WITNESS: According to Mr. Fulton, he said
22 during the conversation between Singletary and Brockington
23 that Singletary wanted to know if Brockington wanted
24 Singletary to wait and do it referring to shooting Tory York
25 since Brockington had just been to York's residence.

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1 Brockington responded no, for Singletary to go ahead and do
2 it now.

3 THE COURT: Was the statement made by Singletary
4 and you want me to do it now, did Mr -- did this witness or
5 the person you were interviewing say that that statement was
6 made by Mr. Singletary in his presence?

7 THE WITNESS: Yes, it was made in the presence of
8 Arlo Fulton.

9 THE COURT: By Mr. Singletary?

10 THE WITNESS: Yes, Mr. Fulton relayed it to me.

11 THE COURT: Okay. All right.

12 You can continue, Mr. Moseley, any additional
13 questions?

14 DEFENDANT MOSELEY: Now, I would like to question
15 the Wakonda Cooper statement on May the 8th, 2002. And,
16 basically, just read the part where Rab, a/k/a Rab was paid
17 500-dollars to F him up, referring to the victim.

18 THE WITNESS: I interviewed Mr. Wakonda Cooper on
19 several occasions, Your Honor. I think the statement he's
20 referring to --

21 DEFENDANT MOSELEY: I think it's May the 8th --

22 THE WITNESS: May the 8th, 2002.

23 DEFENDANT MOSELEY: Yes, sir.

24 THE WITNESS: He said Cooper recalled that
25 Singletary was drunk at the time. Brockington told

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1 Singletary about the theft of the money --

2 THE COURT: Who was drunk?

3 THE WITNESS: Singletary.

4 THE COURT: Okay.

5 THE WITNESS: Singletary asked Brockington to give
6 him some money. Brockington replied that he did not have
7 anything to give Singletary. Singletary asked Brockington
8 that Singletary would take care of it referring to the
9 stolen money and drugs. Singletary told Brockington that he
10 would take anything, that he would take 500-dollars.
11 Brockington agreed and Brockington told Singletary to wait
12 to do something since Brockington had just been at Tory
13 York's residence. Singletary told Brockington that he did
14 not want to wait to do something, that he wanted to do it
15 now because he wanted his money now. Cooper would not --
16 could not recall Brockington paid Singletary the 500-dollars
17 at that point in time. Later at Monkey Joe's club, it was
18 Cooper's understanding that Singletary was supposed to shoot
19 the house up and scare Tory York, not to kill him.

20 THE COURT: Is that it? Is that what you wanted
21 to ask him about?

22 BY DEFENDANT MOSELEY::

23 Q. No, this is -- this is May the 8th, 2002, one, two,
24 three, four paragraphs when Cooper was questioned
25 regarding the murder of Tory York.

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1 THE COURT: You're going to need to talk slower
2 and louder so the court reporter and the witness can hear
3 you.

4 BY DEFENDANT MOSELEY::

5 Q. I don't know what page you're on, but I'm on May the
6 8th, 2002, and it's the fourth --

7 A. I was reading from -- I got that statement. I was
8 reading from page three, which is at the end. I think
9 you're referring to a paragraph on page one.

10 Q. Yes, sir. The fourth paragraph.

11 A. Yes. It says -- I asked him about it. He said Cooper
12 stated that Steve Singletary, also known as Rab --

13 THE COURT: Slow down a little bit.

14 THE WITNESS: Okay. Cooper stated that Steve
15 Singletary, also known as Rab, was paid approximately
16 500-dollars by David Brockington, also known as Little D, to
17 F him up, referring to Tory York.

18 BY DEFENDANT MOSELEY::

19 Q. Okay. Now, I would like to go to June the 19th, 2002,
20 Wakonda Cooper, his polygraph test. Did he pass it?
21 June the 19th, 2002.

22 THE COURT: And that was whose polygraph?

23 DEFENDANT MOSELEY: Wakonda Cooper, who just gave
24 the statement.

25 THE COURT: Okay.

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1 THE WITNESS: The two relevant questions he was
2 tested on that day by FBI polygrapher were, Have you mislead
3 me today concerning the death of that man? The answer was,
4 No. And the second one was, Have you withheld any important
5 information from me concerning the death of that man?
6 Again, the answer was, No.

7 Based on review of the responses, the polygraph
8 examiner said that he was not deceiving, it was not
9 indicative of deception.

10 BY DEFENDANT MOSELEY::

11 Q. Okay. Now, on March the 3rd, 2005, you have a document
12 stating changed. It's changed. The Federal Bureau
13 Investigation changed into whereas you changed the
14 investigation from Steve Singletary and Cornelius
15 Hammond to me, Corey Liner and Dozier.

16 A. Yes, sir.

17 Q. And what was that based on.

18 A. That was based on the fact that this investigation,
19 really, it was a federal drug investigated. We
20 indicted about 15 individuals, one of them was David
21 Brockington. But during the course of that
22 investigation, we kept getting information regarding
23 this murder and that it was drug related of Tory York.
24 So, of course, we kept interviewing individuals who
25 came -- had information about it. Eventually, word on

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1 the street was that Steve Singletary, also known as
2 Rab, was involved in the murder, but the more we
3 investigated the murder to try to prove whether he did
4 it or did not do it, the more we came to the conclusion
5 that he was not involved and didn't have anything to do
6 with it.

7 At that time, the case was cold for a little
8 while. We did get some information that Marlin
9 McKnight may have been involved in it, but there was
10 nothing to indicate from any of facts that he was. At
11 that time, ATF had a case on Lonnie Dozier and the ATF
12 agent, Craig Townsend, told me that I might want to
13 talk to Mr. Dozier since he had information on the
14 murder that I was looking into along with the Kingstree
15 Police Department. So that's what I did, I spoke with
16 Mr. Dozier and then it went from there.

17 Q. So it was based on based on a statement from Mr.
18 Dozier. Was there a proffer deal with Mr. Dozier?

19 A. Mr. Dozier's statement to me was not based on the
20 proffer, it was based on his plea agreement.

21 Q. Plea agreement.

22 THE COURT: And what was what, sir? Did it
23 include anything about this case?

24 THE WITNESS: No, it did not include anything
25 about this case. It was a standard plea agreement. He pled

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1 guilty to several counts in the federal indictment against
2 him. It was an ATF investigation. I believe it was some
3 armed robberies, which he pled guilty to.

4 BY DEFENDANT MOSELEY::

5 Q. But on January the 19th, 2006, to Mr. Mike Graham from
6 you, it states at the bottom, please note that under
7 Lonnie Dozier, the federal plea agreement the
8 information that Dozier provided regarding York's
9 murder cannot be used against Dozier unless he breach
10 his plea agreement, which he has not done to date. We
11 did not even know about Moseley's involvement in the
12 murder until Dozier cooperated under his plea
13 agreement.

14 A. Yes, sir. I received information that the State was
15 charging -- because, initially, we were, actually,
16 looking into this case being a federal case to be
17 prosecuted in federal court. The U.S. Attorney's
18 office deferred it to the state as the prosecutor. I
19 had heard that all of the individuals who were involved
20 in it, including Mr. Dozier, were going to be charged
21 in state court. That letter was more or less stating
22 that I -- the State authorities, first of all, were not
23 bound by what the federal government agreed to do or
24 not to do with Mr. Dozier. That was just his agreement
25 with the federal government. Based on equity and a

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1 sense of fairness, I thought -- we didn't know who was,
2 actually, involved, the subjects that were involved in
3 this particular homicide until Mr. Dozier sat down at
4 length and told us during his interview. And that was
5 more or less telling him, listen, we didn't know about
6 the individuals who, actually, committed the homicide,
7 Mr. Moseley's or Mr. Durant's involvement until
8 Mr. Dozier told us about it. So out of a sense of
9 equity and fairness, myself, I didn't think it was fair
10 that he be charged with it. But they could have
11 charged him with it because it wasn't anything in the
12 plea agreement which would prevent that.

13 Q. Okay. But you stated that he was not given no time cut
14 due to the testimony involving me?

15 A. No, he was not. His -- most of his time cut came
16 because he testified for me in another case at a
17 sentencing hearing for a guy named Johnny Lee Felder,
18 who's nickname is Cool Daddy.

19 Q. Cool Daddy.

20 A. And he had been involved in several armed robberies,
21 including the Days Inn in Lake City and a couple of
22 other businesses. And there was a murder at a store in
23 -- County, Mr. Patel, who was murdered. And we had a
24 sentencing hearing in that particular case. And the
25 judge wanted to hear testimony about the robbery and

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1 Mr. Patel's murder and he had some information about
2 that particular incident. I can't recall exactly what
3 it was, but he testified along with several other
4 witnesses about that murder. And the judge, what they
5 call cross referenced, the homicide when they sentenced
6 Mr. Felder..

7 THE COURT: All right. Any additional questions,
8 Mr. Moseley?

9 DEFENDANT MOSELEY: Yes, sir.

10 BY DEFENDANT MOSELEY::

11 Q. You have a statement, March the 18th, 2002, from Don
12 Burgess in your file?

13 A. Yes, sir.

14 Q. Page five and six at the bottom. It stated somebody
15 was seen with blood on his shirt -- that statement?

16 THE COURT: Do you have that, sir?

17 THE WITNESS: Yes.

18 THE COURT: All right.

19 THE WITNESS: Are you asking me about that
20 particular statement?

21 BY DEFENDANT MOSELEY::

22 Q. That particular statement of who was saw with the blood
23 on his shirt at the --

24 A. Okay. Mr. Don Burgess, on March 18th, 2002, during his
25 briefing was interviewed stated that after the murder

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1 of Tory York, Keisha Burgess told him is that Tony York
2 had blood on him and a lot of drugs in his possession.
3 At that time, Carlos York and Keisha Burgess were
4 dating each other.

5 THE COURT: Who had blood on his shirt?

6 THE WITNESS: He said that Keisha Burgess told him
7 that Tony York had blood on him and lot of drugs in his
8 possession.

9 BY DEFENDANT MOSELEY::

10 Q. And that's the victim's cousin, right, with gold teeth
11 and long braids, description?

12 A. Mr. York?

13 Q. Tony.

14 A. I don't know. I think I had a case on him, but I can't
15 remember.

16 Q. Okay.

17 THE COURT: Any other witness you want to question
18 him about?

19 BY DEFENDANT MOSELEY::

20 Q. There was somebody else on here. You had a Perrell
21 Shaw's statement that Mr. Singletary -- Perrell Shaw
22 from November the 5th, 2002, his statement that
23 Mr. Singletary said that he did kill the victim and he
24 was paid and he was still owed money.

25 A. Which page was that? Yeah, he gave me -- well, a

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1 three-page statement on that date, November 5th, 2002.

2 Q. This is the first page, the third paragraph.

3 A. Singletary admitted to Shaw that Singletary killed York
4 and --

5 THE COURT: Told Mr. Shaw? Singletary told Mr.
6 Shaw?

7 THE WITNESS: Yes, that's what he said.
8 Singletary admitted to Shaw that Singletary killed York and
9 complained to Shaw that Brockington still owes Singletary
10 5000-dollars for the murder. Singletary told Shaw that
11 Brockington had promised to pay Singletary 10,000-dollars to
12 kill York, but that Brockington only had paid Singletary
13 5,000-dollars prior to the murder before Brockington
14 committed suicide.

15 BY DEFENDANT MOSELEY::

16 Q. Now, from there, I want to get back to Mr. Dozier, his
17 statement to you.

18 THE COURT: Okay. You're going to be permitted to
19 ask him questions in front of the jury about Mr. Dozier.

20 DEFENDANT MOSELEY: Okay. These --

21 THE COURT: Any other ones you want to ask him
22 about?

23 DEFENDANT MOSELEY: No, those will be the ones
24 that I want to present in front of the jury.

25 THE COURT: All right. Now, Ms. Barr, any

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1 objection -- first of all, let's go one by one. He wants to
2 question Agent Flamini about his interviews with Singletary,
3 Wakonda Cooper, Arlo Todd Fulton, Perrell Shaw and Donald
4 Burgess. You have objections?

5 MS. BARR: I do.

6 THE COURT: And those are?

7 MS. BARR: Those are hearsay.

8 THE COURT: All right.

9 Mr. Moseley?

10 DEFENDANT MOSELEY: If that's the case that those
11 are hearsay, the testimony of Lonnie Dozier is hearsay.
12 It's a known fact that they was paid and Wakonda Cooper and
13 Todd Fulton were best friends of Mr. Brockington and know
14 that he did pay him.

15 THE COURT: Mr. Dozier testified about his own
16 involvement.

17 DEFENDANT MOSELEY: Uh-huh.

18 THE COURT: And what Mr. Singletary told him or
19 what -- when he was present about what Mr. Singletary said.

20

21 DEFENDANT MOSELEY: Uh-huh.

22 THE COURT: That would be a statement against
23 Mr. Singletary's interest as made in the presence of Mr.
24 Dozier. What we have here is witnesses telling Agent
25 Flamini what somebody else told them. That is by definition

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1 hearsay. If Mr. Singletary were here, if Mr. Singletary
2 were here, that would be a different story because you would
3 be able to question him, didn't you tell, perhaps, somebody
4 that do you want me to do it now? Of course, he's deceased.

5 Wakonda Cooper testified to what Mr. Singletary
6 said on an occasion when Mr. Singletary was drunk and that
7 Brockington told him that he'd paid Singletary 500-dollars
8 to F him up, talking about Tory York.

9 Donald Burgess told Agent Flamini that Keisha told
10 him that Tony York had blood on his shirt. That's hearsay.
11 Perrell Shaw told Agent Flamini that Mr. Singletary told
12 him, Mr. Shaw, that he killed Tory York and complained that
13 Mr. Brockington had only paid half off of the 10,000-dollars
14 that he agreed to pay. That's hearsay.

15 DEFENDANT MOSELEY: But do you not see that it's
16 circumstantial, also, alluding to showing the fact that he
17 was paid?

18 THE COURT: It all goes back --

19 DEFENDANT MOSELEY: Because you have --

20 THE COURT: It all goes back to the fact that it's
21 an out-of-court statement offered to prove the truth of the
22 matter asserted. Now, there's some exceptions that could,
23 perhaps, come into play. If Mr. Shaw was here, if Mr. Shaw
24 was here, he could probably testify -- and Ms. Barr would
25 probably agree with this, that Mr. Singletary told him I did

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1 it because that's a statement against interest. I'm not
2 going to get into whether or not that would be the case, but
3 that -- that's not what we have here. We have this witness
4 saying what somebody told him somebody told him. If the
5 court system allowed all of that type of stuff in, then no
6 witnesses would ever have to come, everybody could just
7 testify on what somebody told him somebody told him. So
8 those are all hearsay.

9 Ms. Barr, do you have any additional comments
10 before we move on?

11 MS. BARR: I do not, Your Honor.

12 THE COURT: All right. Anything else, Mr.
13 Moseley?

14 DEFENDANT MOSELEY: So none of Wakonda Cooper, no
15 Perrell Shaw can be asked in front of the jury?

16 THE COURT: Not unless Perrell Shaw is here,
17 Wakonda Cooper is here and they say --

18 DEFENDANT MOSELEY: Okay.

19 THE COURT: -- what these statements against
20 interest were made by these individuals.

21 DEFENDANT MOSELEY: So I can only question him
22 about Lonnie Dozier?

23 THE COURT: That is my ruling.

24 DEFENDANT MOSELEY: Okay.

25 THE COURT: Okay.

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1 DEFENDANT MOSELEY: Yes, sir.

2 THE COURT: Okay. We'll take five minutes.

3 Agent, you can step down.

4 This is going to be five minutes. Please, nobody
5 go downstairs. Nobody go to any other floor. We will take
6 a quick break. I will be back in the courtroom when that
7 clock says 12:15.

8 (Whereupon, a short recess was held.)

9 THE COURT: Mr. Moseley, are you ready for the
10 jury?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: Ms. Barr, are you ready for jury?

13 MS. BARR: State's ready, Your Honor.

14 THE COURT: Okay. You can bring them in.

15 (Whereupon, the jury returned to the
16 courtroom at 12:13 p.m.)

17 THE COURT: All right. Mr. Moseley.

18 BY DEFENDANT MOSELEY:

19 Q. Are you familiar with the August 7th, 2003 statement
20 provided by Mr. Lonnie Dozier?

21 A. Yes, sir, I interviewed Mr. Dozier on that date.

22 Q. Would you go to Page 2 where Mr. Dozier states who was
23 given the gun, second paragraph?

24 A. Says March of 2001, he told me that Corey Liner and
25 Arthur Moseley picked up Dozier at his residence and

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1 then drove to the residence of Steve Durant. While at
2 Durant's residence, Durant told Dozier, Liner and
3 Moseley that Tory York, Tony York, Carlos York and
4 Keisha Burgess had robbed David Brockington, also known
5 as Little D, of some crack cocaine. Durant indicated
6 that Tory York had a lot of the crack cocaine in his
7 possession from the robbery. They then decided to rob
8 Tory York of the drugs, so Durant gave Moseley a black
9 .38 caliber revolver with a rubber grip.

10 Q. And you attest that it is true, the statement that
11 Mr. Dozier gave you, that's what he said?

12 A. When I interviewed him, yes. I took notes and that's
13 what he told me on that particular date, August 7,
14 2003.

15 Q. Okay.

16 DEFENDANT MOSELEY: Let the record show that
17 Durant -- he stated that Durant gave me a gun, yet when I
18 asked Mr. Dozier on the stand, he said Durant gave Corey the
19 gun. I just want --

20 THE COURT: No, you don't -- you may ask questions
21 and later on, you may argue to the jury.

22 DEFENDANT MOSELEY: Okay.

23 THE COURT: You may ask the witness questions.

24 BY DEFENDANT MOSELEY:

25 Q. Could you go the next paragraph when it states who was

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1 in the passenger seat?

2 A. Mr. Dozier told me that Dozier, Liner and Moseley then
3 left Durant's residence to go driving in Moseley's
4 girlfriend's car, a black Pontiac Grand Am. At the
5 time, Liner was driving the vehicle. Moseley was in
6 the front passenger seat and Dozier was in the back
7 seat of the vehicle. Moseley had possession of the .38
8 caliber revolver.

9 DEFENDANT MOSELEY: Let the record show that the
10 eyewitness, Mr. Chandler --

11 MS. BARR: Judge, we're going to object to that.

12 THE COURT: Okay. You can argue that later on --

13 DEFENDANT MOSELEY: Oh.

14 THE COURT: -- but what you can't do is compare
15 one witness's testimony to the other with the witness.

16 DEFENDANT MOSELEY: That's how I got -- that's how
17 I got this written out.

18 THE COURT: Yes, sir, you can argue that later.

19 DEFENDANT MOSELEY: Give me a minute because
20 that's how I had it written out, so I could just ask the
21 question then keep going. So I can't say let the record
22 show?

23 THE COURT: Not at this stage.

24 DEFENDANT MOSELEY: Okay.

25

VINCENT FLAMINI DIRECT BY MR. MOSELEY

1 BY DEFENDANT MOSELEY:

2 Q. Would you go to Page 3, the third paragraph, upon
3 arrival?

4 A. Okay. Mr. Dozier told me that upon arrival at Durant's
5 residence, referring to Steve Durant, Moseley gave
6 Durant the .38 caliber revolver and told Durant about
7 the shooting of Tory York. Durant stated that it was
8 the gun. This, obviously, was after the shooting.

9 Q. Okay. Let me go to March 3rd, 2005, change
10 documentation?

11 THE COURT: You said change documentation?

12 DEFENDANT MOSELEY: Changed it -- when they
13 changed it to other people to me and whatever else.

14 THE COURT: Okay.

15 DEFENDANT MOSELEY: It's titled change, that's the
16 title of the document.

17 THE COURT: March 3, 2005 --

18 DEFENDANT MOSELEY: Yes, sir.

19 THE COURT: -- Mr. Moseley?

20 DEFENDANT MOSELEY: Yes, sir.

21 BY DEFENDANT MOSELEY:

22 Q. So who was the alleged perpetrator until you changed
23 the -- you changed it to me, Durant and Dozier? Who
24 was the alleged perpetrator?

25 MS. BARR: Objection as to hearsay, Your Honor.

VINCENT FLAMINI CROSS BY MS. BARR

1 DEFENDANT MOSELEY: How is that, sir, when it's
2 stated who it was changed from. Due to the fact --

3 THE COURT: All right. Y'all come up, please.
4 (Whereupon, a bench conference was held
5 off the record, in the presence of the
6 jury, but out of the hearing of the
7 jury.)

8 THE COURT: All right. You can clarify the
9 question, Mr. Moseley. Thank you.

10 BY DEFENDANT MOSELEY:

11 Q. At what point did your federal investigation start
12 looking towards me, Mr. Durant, Mr. Dozier and Mr.
13 Liner?

14 A. After I interviewed Mr. Dozier.

15 Q. And that was how many years latter after the incident?

16 A. I interviewed Mr. Dozier on August the 7th, 2003.

17 Q. And you changed it on March 3rd, 2005, due to that
18 interview with Mr. Dozier?

19 A. Yes, that's internal FBI communication that there might
20 not have been any FBI communications back and forth,
21 just interviews in the interviewing period of time
22 between '03 and '05, so that was why -- that was the
23 first documentation of the first document to the FBI
24 that I sent.

25 Q. And when did you give this information towards the

VINCENT FLAMINI CROSS BY MS. BARR

1 State?

2 A. The State? Oh, they knew about it as soon as I
3 interviewed Mr. Dozier.

4 THE COURT: You mean the prosecutor?

5 THE WITNESS: I mean the Kingstree Police
6 Department.

7 THE COURT: Okay.

8 BY DEFENDANT MOSELEY:

9 Q. That was January 2006?

10 A. No, they would have known about it in August of 2003.

11 Q. 2003.

12 DEFENDANT MOSELEY: No further questions, sir?

13 THE COURT: All right.

14 Ms. Barr, cross-examination.

15 MS. BARR: Thank you.

16 CROSS-EXAMINATION

17 BY MS. BARR::

18 Q. Good afternoon, Agent Flamini.

19 A. Good afternoon.

20 Q. Let me clear up one quick point, then I will ask you a
21 little bit about what you do.

22 When was the formal case file from the FBI given
23 to Mike Graham of the Kingstree Police Department?

24 A. On --

25 Q. Was that January 19th, 2006?

VINCENT FLAMINI CROSS BY MS. BARR

1 A. It would have been about, yes. It was at that time
2 that I talked to the U.S. Attorney's office about
3 bringing charges federally and they deferred
4 prosecution to the State authorities, which is not
5 unusual. They do that from time to time.

6 Q. Tell us exactly what it is that your occupation is,
7 what you, actually, do for a living and how long you've
8 been in law enforcement.

9 A. I've been an FBI agent almost 25 years. I'm right now
10 the coordinator for the PD violent crime task force,
11 which we, actually, violent crimes, of course, drug and
12 gang cases. And I've been doing that since 1999 and I
13 been with the agency since '89.

14 Q. All right. And you work principally out of where?

15 A. I work out of Florence and cover a five-county area,
16 including Williamsburg County.

17 Q. Okay. And as a part of being an FBI agent and
18 investigating drug activity throughout the state, it's
19 not unusual at all for you to talk to federal inmates,
20 correct?

21 A. That's correct.

22 Q. Oftentimes, you have situations where federal inmates
23 provide information to you about crimes that have been
24 unsolved for a period of time, correct?

25 A. Yes. The federal court system is really built on

VINCENT FLAMINI CROSS BY MS. BARR

1 cooperation. I would say probably over 90 percent,
2 that's being conservative, of the cases that I have
3 individuals corporate. They could get a possible cut
4 in their sentences on the day they're, actually,
5 sentenced and, also, later on, what they call rule 35.
6 If they're in federal prison, for instance, and we need
7 them to testify in a case and we bring them back to
8 federal prison to testify at a trial and they do
9 truthfully, then the U.S. Attorney's office will often
10 make a motion, a rule 35 motion to the court. And then
11 it's up to the judge to decide whether -- number one,
12 whether he'll grant the motion, and number two, how
13 much time to, actually, knock off the sentence.

14 Q. Now, most murders that are committed in South Carolina,
15 they are state crimes for the most part, correct?

16 A. Yes, the vast majority of murders are State crimes.
17 There is a federal statute for drug-related homicide.
18 It's got to be drug-related for it to be a federal
19 crime.

20 Q. Okay. And if this were true, that the victim in this
21 case was purportedly killed because he had drugs, then
22 that would be considered -- could be considered a
23 federal crime, correct?

24 A. Yes.

25 Q. Okay.

VINCENT FLAMINI CROSS BY MS. BARR

1 A. That would be a federal crime.

2 Q. Okay. When you all give immunity to individuals who
3 provide you information, what you're, essentially,
4 doing is you're giving them immunity from federal
5 prosecution, correct?

6 A. Yes, it's -- I've never -- I don't think I've ever had
7 a case in 25 years that we, actually, gave someone
8 immunity.

9 Q. Okay.

10 A. It's more or less a cooperation agreement is what they
11 refer to it as, a plea agreement, a cooperation
12 agreement, which obligates the government, the federal
13 government to have certain obligations under the agree,
14 but, also, that the defendant has certain obligations
15 under that same agreement. And if the defendant
16 breaches any of those obligations, you know, then it's
17 spelled out what could happen to him or her in that
18 agreement.

19 Q. Okay. But it's not a situation where the federal
20 government is telling the State that the State cannot
21 prosecute an individual, right?

22 A. No. I've only had one case, it was a case in which the
23 solicitor's office, the U.S. Attorney's office, the
24 defendant and the defendant's attorney, actually,
25 signed a plea agreement, all of the parties. Usually,

VINCENT FLAMINI CROSS BY MS. BARR

1 it's just an agreement between the defendant, his
2 attorney and the federal government. And the State
3 government is not under any obligation to abide by
4 that.

5 Q. And simply stated, the feds cannot tell the State what
6 and what not to prosecute and the State can't tell the
7 feds what to and what not to prosecute, correct?

8 A. That's true.

9 Q. Okay. Now, as it relates to the interview with Lonnie
10 Dozier back in 2003, obviously, he gave you information
11 about an unsolved homicide in Williamsburg County,
12 correct?

13 A. Yes.

14 Q. And during the course of the statement and the
15 interview of Mr. Dozier, he never waffled about who
16 provided the gun that was used to commit the murder,
17 did he?

18 A. I don't believe so, no.

19 Q. He always said that Steve Durant provided the gun that
20 was used in the murder, correct?

21 A. Yes.

22 Q. And he never waffled about how many persons were,
23 actually, at the scene when the murder happened,
24 correct?

25 A. That's correct.

VINCENT FLAMINI CROSS BY MS. BARR

- 1 Q. And he always said he was there, that Arthur Moseley
2 was there and that Corey Liner was there, correct?
- 3 A. That's correct.
- 4 Q. And he talked about the type of vehicle that was used.
5 He never waffled about that, correct?
- 6 A. Right.
- 7 Q. And he described that vehicle as being a black Pontiac
8 Grand Am, correct?
- 9 A. Yes.
- 10 Q. He described the vehicle as belonging to Arthur
11 Moseley's girlfriend, correct?
- 12 A. Yes.
- 13 Q. All right. And he never waffled about who drive from
14 Steve Durant's house to the victim's house and then who
15 drive from the victim's house back to Steve Durant's
16 house, did he?
- 17 A. No, he never did.
- 18 Q. Okay. He was clear this was Corey Liner, correct?
- 19 A. Yes.
- 20 Q. All right. And he never waffled about who, actually,
21 shot and killed Tory York, did he?
- 22 A. No, he never waffled on that.
- 23 Q. And was absolutely clear with you that that was the
24 Defendant Arthur Moseley, wasn't he?
- 25 A. Correct.

VINCENT FLAMINI CROSS BY MS. BARR

1 Q. Never changed that part of it, did he?

2 A. No.

3 Q. Did he hesitate at all with you during your interview?

4 A. No, not that I recall.

5 Q. Now, don't tell me the substance of it, but after you
6 conducted this interview of Lonnie Lamont Dozier of
7 August the 7th of 2003, did you subsequently interview
8 Corey Liner on August the 26th of 2003?

9 A. Yes. Actually, it was August the 21st.

10 Q. August the 21st. And did you note any biographical
11 information about Corey Liner in terms of his height?

12 A. I don't remember any of that.

13 Q. What about his birthday?

14 A. His birthday was .

15 Q. Now, in terms of any promises or anything or any
16 inducements that were given to Mr. Dozier, has the U.S.
17 Attorney's office, to your knowledge, reduced any of
18 the time that he was committed to serve as a result of
19 him providing information about the murder of Tory
20 York?

21 A. As far as I know, he did not receive any benefit for
22 that.

23 Q. Okay.

24 A. Most of time, they will hold off on that until that
25 case that he gave information on is fully adjudicated

VINCENT FLAMINI CROSS BY MS. BARR

1 and then they'll consider it, whether or not to make a
2 motion on it because the defendant cannot compel the
3 government to make a motion for that. Then once they
4 make the motion, it's up to judge either to grant or
5 deny the motion, then it's, also, up to the judge how
6 much time to knock off.

7 Q. When Mr. Dozier gave his statement to you about what
8 happened -- and if you will refer to that August 7th
9 statement, if you will.

10 A. Okay.

11 Q. Tell me how he described the shooting happened to you
12 way back when.

13 A. He told me about --

14 Q. And I'm specifically referring to Page 2, the last
15 paragraph on Page 2 that starts with, On arrival at
16 Tory York's residence.

17 A. According to Mr. Dozier, Mr. Liner asked Tory York if
18 he wanted to buy a weapon. While Liner was still
19 sitting in the vehicle, Mr. Liner mentioned to Tory
20 York what he had heard regarding the robbery of David
21 Brockington. Tory York then came down the steps of his
22 residence and approached the vehicle to see the gun.
23 At this time, Mr. Moseley got out of the front
24 passenger seat of the vehicle while Lonnie Dozier
25 remained in the vehicle. Moseley stated -- this is, of

VINCENT FLAMINI CROSS BY MS. BARR

1 course, according to Mr. Dozier, quote, give me the
2 money everything and then stated an expletive, end
3 quote. At that time, Tory York backed away, stated
4 hold on, you don't need to do it like that. Moseley
5 pulled out the .38 caliber revolver and pointed it a
6 Tory York. Tory York pulled at his back pocket and Mr.
7 Moseley told him to give Moseley the money.

8 DEFENDANT MOSELEY: Objection, Your Honor.

9 THE COURT: Yes, sir.

10 DEFENDANT MOSELEY: All of this is hearsay, sir.

11 THE COURT: All right. Come on up, please.

12 (Whereupon, a bench conference was held
13 off the record, in the presence of the
14 jury, but out of the hearing of the
15 jury.)

16 THE COURT: All right. Ladies and gentlemen,
17 please, step to your jury room. You will not discuss the
18 case.

19 (Whereupon, the jury left the courtroom
20 at 12:34 p.m.)

21 THE COURT: All right. Ms. Barr, you were to page
22 what of the statement?

23 MS. BARR: Page two.

24 THE COURT: Okay. And the question was what did
25 Lonnie Dozier tell you about the incident about -- and then

1 he began with the conversation between Mr. Liner and the
2 deceased. Then it left off or, at least, the objection rose
3 when the comments made by Mr. Moseley were made to the
4 effect, Give me the money and Mr. York said, You don't have
5 to do it like that.

6 Your objection is what, Mr. Moseley?

7 DEFENDANT MOSELEY: All of this is hearsay. You
8 have a different version that Mr. Dozier stated on the stand
9 from what he stated in his transcript.

10 THE COURT: Okay.

11 DEFENDANT MOSELEY: Which version is true? Plus,
12 you have a version of Mr. Liner that is --

13 THE COURT: Now, Mr. Liner has not testified yet.
14 I don't know if you're going to call him, you don't have to.
15 I don't know if Ms. Barr is going to call him in reply. I
16 don't know. I'm a little uncomfortable right now -- well,
17 I'm not uncomfortable at all, I'm confused, I guess that's
18 the best way to put it. You're objecting to what this
19 witness says Mr. Dozier told him, but you were earlier
20 eliciting information about what Mr. Dozier told this
21 witness, correct?

22 DEFENDANT MOSELEY: Yes, sir.

23 THE COURT: All right. And you maintain that
24 because -- the statement that the witness is going over now
25 is inconsistent with what Mr. Dozier said during his

1 testimony?

2 DEFENDANT MOSELEY: Yes, sir. And I may be
3 calling Mr. Liner attesting to his version because you've
4 got several different versions of these two --

5 THE COURT: All right. Ms. Barr, what --

6 DEFENDANT MOSELEY: -- eyewitnesses, sir.

7 THE COURT: Okay. What is your comment or your
8 response to the hearsay objection?

9 MS. BARR: Your Honor, under rule 801(d)(1)(b), it
10 defines what statements which are not hearsay. It
11 specifically states that prior statements of a witness that
12 are consistent with the declarant's testimony, that's after
13 Lonnie Dozier has testified and is offered to rebut an
14 expressed or implied charge against the declarant of recent
15 fabrication or improper influence provided, however, that
16 the statement has been made before the alleged fabrication
17 or before the alleged improper influence or motive. So I
18 would submit that it's not hearsay under 801(d)(1)(b).

19 THE COURT: Mr. Moseley says it's inconsistent.

20 DEFENDANT MOSELEY: Thank you, sir, that's what I
21 was about to say.

22 THE COURT: Well, that might not help you. You
23 say it's inconsistent.

24 DEFENDANT MOSELEY: Yeah.

25 THE COURT: Okay.

1 MS. BARR: And, also, Your Honor, we submit that
2 under rule 106, we believe that the document or portions of
3 the document should be admitted under the notion that the
4 jury ought to hear the statement in its entirety for sake of
5 completeness. When Mr. Dozier -- I'm sorry, when Mr.
6 Moseley examined the witness, he asked him about what
7 happened at the home of Steve Durant in terms of who had the
8 gun. And then the next question he asked was who gave the
9 gun back to Mr. Durant in terms of impeaching Mr. Lonnie
10 Dozier's testimony regarding who got the gun from Mr. Durant
11 and who gave it back to Mr. Durant. So he goes from that
12 part of the statement until the next where he says well,
13 upon arrival at Durant's residence, Moseley gave Durant the
14 .38 caliber revolver and told Durant about shooting Tory
15 York. So that suggest to the jury that when they arrived
16 back at the home that -- it's not really clear as to who
17 told Mr. Durant about the shooting of Tory York. So I
18 wanted to make sure under the doctrine of completeness that
19 the statement in its entirety is submitted to the jury.

20 THE COURT: All right.

21 Mr. Moseley?

22 DEFENDANT MOSELEY: Once again, going back to the
23 inconsistencies of it, sir. And I may well call Mr. Liner
24 because there's two different transcript versions of me
25 allegedly doing this crime. Then you've the witness,

1 Mr. Chandler, his version and he's the eyewitness. And due
2 to what they told him, they can't be -- I mean, which
3 version -- to make a long story short, which version of
4 Lonnie Dozier's testimony, on the transcript or on the
5 stand, is the jury supposed to believe, sir?

6 THE COURT: All right.

7 DEFENDANT MOSELEY: There's a lie some place.

8 THE COURT: Now, you content that the comments or
9 statement made by Mr. Dozier to Agent Flamini that you've
10 objected to are inconsistent with Mr. Dozier's trial
11 testimony?

12 DEFENDANT MOSELEY: Yes, sir.

13 THE COURT: For that reason, under rule 613, he
14 can be examined on the inconsistencies just like you did.

15 DEFENDANT MOSELEY: Okay.

16 THE COURT: She can do it, too. She also --
17 Ms. Barr also contends that -- and this is the rule. A
18 statement is not hearsay if it is a prior statement by a
19 witness, the declarant testifies at trial, which Mr. Dozier
20 did, subject to cross-examination, he was, concerning the
21 statement and the statement is consistent with his testimony
22 and is offered to rebut an expressed or implied charge
23 against the declarant of recent fabrication or improper
24 influence of motive. That's what you accuse Mr. Dozier of,
25 is that correct? You accuse him of not telling the truth?

1 DEFENDANT MOSELEY: Yes, sir.

2 THE COURT: Okay.

3 DEFENDANT MOSELEY: And I wasn't allowed to offer
4 this into evidence because I hadn't asked him, remember, you
5 told me I had to ask him attesting to Mr. Dozier's
6 statement.

7 THE COURT: I told you you could ask him anything
8 you wanted about Mr. Dozier's statement.

9 DEFENDANT MOSELEY: Yes, sir. But I couldn't -- I
10 couldn't refute really what Mr. Dozier said on the document,
11 sir, because he hadn't sworn to the testimony.

12 THE COURT: It doesn't -- well, I don't know what
13 you mean by sworn. Mr. Dozier has testified.

14 DEFENDANT MOSELEY: Yes, sir.

15 THE COURT: You can examine Agent Flamini on
16 anything that he was told by Mr. Dozier that you claim was
17 inconsistent with what Mr. Dozier told this jury. You can
18 do that. I never prohibited you from doing that.

19 DEFENDANT MOSELEY: But I couldn't question
20 Mr. Dozier about his statement because he wasn't here yet on
21 this transcript to show that --

22 THE COURT: No, sir. No, sir. I never made that
23 ruling. I never made that ruling. The rule is that you can
24 question Agent Flamini about inconsistent things that
25 Mr. Dozier told him. Mr. Dozier, under the same rule, has

1 to be told about what you claim the inconsistencies are. I
2 think the jury's -- what you questioned Mr. Dozier about was
3 the immunity. He said he got immunity.

4 DEFENDANT MOSELEY: Uh-huh.

5 THE COURT: He also may have said who had the gun
6 first or who Mr. Singletary gave the gun to. You questioned
7 Mr. Dozier about that, you questioned this witness about
8 that.

9 DEFENDANT MOSELEY: She objected on several times
10 on me showing what he said in black and white. That's -- it
11 was stated that he has to attest -- I have to submit this
12 documentation and he has to attest that this is fact. I
13 couldn't ask Mr. Dozier everything he stated on here, sir.

14 THE COURT: All right. Ms. Barr, do you have a
15 response to that?

16 DEFENDANT MOSELEY: I couldn't ask him that. She
17 kept objecting.

18 THE COURT: Well, fact that she objects doesn't
19 make any difference. What makes a difference is how I rule,
20 okay?

21 All right. Ms. Barr, did you object to him
22 questioning Mr. Dozier about his statement?

23 MS. BARR: Judge, the only thing that I objected
24 to as I recall was the Defendant's attempt to pit witnesses
25 in terms of -- well, I shouldn't say pit witnesses, but in

1 terms of saying let the record reflect earlier today or
2 earlier during the trial Mr. Dozier said X, but he told you
3 something different when you interviewed him in '03. That
4 was the only source of my objection. I think the Court's
5 instruction to the Defendant was he could make that argument
6 in closing, but he couldn't do that with the witness.

7 THE COURT: All right. As far as your questioning
8 of Mr. Dozier, I don't believe I prohibited you from asking
9 him anything about what he told Agent Flamini.

10 Now, I'm going to allow Ms. Barr to ask the
11 question that you objected to. Now, if you contend that the
12 statement given to Agent Flamini is inconsistent with what
13 he told that jury, it seems to me that you would want that
14 out there, too, just to tell this jury that Lonnie Dozier
15 doesn't know which way's up.

16 DEFENDANT MOSELEY: Okay.

17 THE COURT: Now, that's for you to argue to the
18 jury.

19 DEFENDANT MOSELEY: Okay. When can I do that
20 because when I was reading it, I was saying -- because I
21 wrote this. I stayed up to 2:00 last night trying to get
22 stuff situated adjusting to the rules of presenting
23 documents, then asking questions in the format.

24 THE COURT: Okay.

25 DEFENDANT MOSELEY: I kept saying let the record

1 show that Dozier said such and such and such.

2 THE COURT: Here's what you argue to the jury if
3 you want to, ladies and gentlemen, you have heard Lonnie
4 Dozier testify.

5 DEFENDANT MOSELEY: Uh-huh.

6 THE COURT: You have heard Agent Flamini tell you
7 what Lonnie Dozier told him, then you can argue if you want
8 how those things aren't consistent. You don't need to use
9 the words let the record show, that's not how you do it.
10 But if that's how you want to do it in front of the jury,
11 that's fine. But you don't that with this witness. Okay.

12 DEFENDANT MOSELEY: Okay.

13 THE COURT: That's argumentive, it's pitting one
14 witness against another. When you argue to the jury, you
15 can point out what your perceive to be inconsistencies.

16 DEFENDANT MOSELEY: Okay. So that's at the end of
17 my final statement after hers?

18 THE COURT: Yes, sir, it's called argument.

19 DEFENDANT MOSELEY: Okay.

20 THE COURT: Yes, sir.

21 DEFENDANT MOSELEY: I got you.

22 THE COURT: Now, I will respectfully overrule your
23 objection.

24 I'm not so sure, Ms. Barr, about the technical
25 application of the last part of rule 801(d)(1)(b) because

1 the statement made by Mr. Dozier to the agent must have been
2 made before the alleged fabrication or before the alleged
3 improper influence or improper motive arose.

4 I'm going to overrule the objection based on
5 Mr. Moseley's own statement that he believes that the
6 comments were inconsistent with one another, the statements
7 to Agent Flamini as compared to Mr. Dozier's testimony at
8 trial and, also, under rule 106.

9 Okay. I'm going to allow the jury to come back
10 in.

11 Are you ready, Mr. Moseley?

12 DEFENDANT MOSELEY: Yes, sir.

13 THE COURT: All right.

14 Ms. Barr?

15 MS. BARR: Yes, sir.

16 THE COURT: All right. And by the way, after he
17 steps down, who will be your next witness?

18 DEFENDANT MOSELEY: The other person that was
19 subpoenaed is here, but I haven't had a chance to talk to
20 him.

21 THE COURT: Who is that?

22 MS. BUTCHER: It was --

23 MR. CARRAWAY: Zachary Woods.

24 MS. BUTCHER: I don't know anything about it.

25 THE COURT: All right. As he given a statement to

1 anybody?

2 DEFENDANT MOSELEY: And I would like to call in my
3 investigator.

4 THE COURT: No, you're not going to call --

5 DEFENDANT MOSELEY: Their investigator.

6 THE COURT: Sir? You're going to call the
7 investigator?

8 DEFENDANT MOSELEY: Their investigator, Mr. Coker,
9 to the stand about a document that he attested to.

10 THE COURT: Oh, you can call Investigator Coker.
11 All right. Then after that, have you decided whether or not
12 you are or are not --

13 DEFENDANT MOSELEY: Yes, I have one -- I have one
14 more alibi witness -- I really have two that's scheduled
15 that could not come today. You stated we would have court
16 on Saturday, correct?

17 THE COURT: I -- not if I can help it.

18 (Laughter.)

19 DEFENDANT MOSELEY: But I have one that's here.

20 THE COURT: We've not going to wait until tomorrow
21 for somebody to get here.

22 DEFENDANT MOSELEY: I feel you, but I have one
23 that's here and if it goes to tomorrow, I have one for
24 tomorrow. But until then, for now, I would finish with him
25 and --

VINCENT FLAMINI CROSS CONTINUED BY MS. BARR

1 THE COURT: We're going to finish with this
2 witness.

3 DEFENDANT MOSELEY: Yes, sir.

4 THE COURT: Then we're going to break for lunch
5 for 45 minutes.

6 DEFENDANT MOSELEY: Okay.

7 THE COURT: All right. Bring in the jury.

8 (Whereupon, the jury returned to the
9 courtroom at 12:47 p.m.)

10 THE COURT: Okay. Ms. Barr.

11 MS. BARR: Yes, Your Honor.

12 BY MS. BARR:

13 Q. Agent Flamini, when Mr. Dozier gave you the statement
14 and he talked to you about what happened at the home of
15 Tory York, after he told you that the Defendant, Arthur
16 Moseley, pulled a gun on the victim, what else did he
17 tell you happened from that point?

18 A. He stated that Tory York pulled his back pocket when
19 Moseley told him to give Moseley the money. At that
20 time, Moseley shot Tory York twice in the chest. Tory
21 York then ran towards the back of his residence after
22 he was shot. Moseley then jumped back into the vehicle
23 and stated drive, drive.

24 Q. All right. And he also told you that both he and
25 Mr. Liner were yelling at Arthur Moseley asking him why

VINCENT FLAMINI CROSS CONTINUED BY MS. BARR

1 he did that, right?

2 A. Yes, it was -- according to him, it was very
3 unexpected. They did not expect him to shoot.

4 MS. BARR: All right. That's all the questions I
5 have.

6 THE COURT: All right.

7 Redirect, Mr. Moseley?

8 DEFENDANT MOSELEY: I have no fewer questions.

9 THE COURT: Thank you, sir. You may step down.

10 Mr. Moseley, do you want the witness released?

11 DEFENDANT MOSELEY: Yes, he can be released, sir.

12 THE COURT: Mrs. Barr.

13 MS. BARR: Yes, sir, Judge.

14 THE COURT: Thank you, Agent Flamini. You can,
15 certainly, stay or leave, whichever you would like.

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Ladies and gentlemen,
18 we're going to break for lunch now. This is going to be a
19 relatively short break. You'll see from that back clock now
20 it's 10 minutes to one. Please be back in your jury room by
21 quarter to two. That's 55 minutes. We will begin promptly
22 at that time. I can guarantee you that. All right. You
23 may not discuss the case in any way. And I will look
24 forward to seeing you in 55 minute.

25 (Whereupon, the jury left the courtroom)

1 at 12:50 p.m.)

2 THE COURT: All right. If everyone can, please,
3 note my respectful demand that we start at quarter to two,
4 okay?

5 MS. BARR: Yes, sir.

6 THE COURT: The jury has been in the jury room for
7 most of today for in-camera presentations.

8 Now, Mr. Moseley, if you want to talk your witness
9 during the lunch hour, that lunch 55 minutes, that's fine.

10 DEFENDANT MOSELEY: Yes, sir.

11 THE COURT: But I suggest that you go ahead and do
12 that.

13 DEFENDANT MOSELEY: Yes, sir.

14 THE COURT: We will start promptly at quarter to
15 two. What you also have to keep in mind is that I -- what
16 you need to do is let me know when you have presented your
17 last witness other than yourself, tell me you want to talk
18 to me up here.

19 DEFENDANT MOSELEY: Okay.

20 THE COURT: Then you will have to let me know what
21 your decision is.

22 DEFENDANT MOSELEY: Yes, sir.

23 THE COURT: About whether or not you will testify.

24 DEFENDANT MOSELEY: Yes, sir.

25 THE COURT: Ms. Barr, if you anticipate even

1 remotely any reply witnesses, they've got to be here at
2 quarter to two.

3 MS. BARR: Yes, sir.

4 THE COURT: Okay.

5 MS. BARR: Yes, sir.

6 THE COURT: Not any later because Mr. Moseley may
7 rest and we're not going to wait on any witnesses to arrive.

8 Mr. Moseley, if you have additional witnesses to
9 call, they must be here this afternoon.

10 DEFENDANT MOSELEY: Yes, sir.

11 THE COURT: All right. We're adjourned till
12 quarter to two.

13 (Whereupon, a lunch recess was held.)

14 THE COURT: I think we're waiting on one or two
15 jurors.

16 Mr. Moseley, will you have any additional
17 witnesses today -- or excuse me, during the presentation of
18 your case? And that would include, but, certainly, not
19 limited to whether or not you will testify.

20 DEFENDANT MOSELEY: Yes, sir. My stepfather,
21 Jessie Smith.

22 THE COURT: Okay. Now --

23 DEFENDANT MOSELEY: And I will -- I will be
24 testifying because you stated that I have an affidavit to
25 attesting to these are my documentations, so I -- I guess I

1 would have to be on the stand to attest to them and
2 whatever. If I'm not mistaken, that's what you stated to
3 me, if I'm mistaken. I'm not sure how I'm doing this, sir.

4 THE COURT: No, I -- you're talking about you
5 testifying?

6 DEFENDANT MOSELEY: Yes. According --

7 THE COURT: Okay. Is the jury here?

8 BAILIFF: She's checking now, Your Honor.

9 THE COURT: Go ahead.

10 DEFENDANT MOSELEY: According to what I hear from
11 you yesterday, correct me if I'm wrong, these documentations
12 of the medical files have to be presented to you, you have
13 to mark them and I have to attest to them.

14 THE COURT: No, sir, that's not what I said. If
15 you want to offer them, they have to be marked, first of
16 all.

17 DEFENDANT MOSELEY: Okay.

18 THE COURT: For them to be shown to the jury or
19 testified about by you or any other witness, that doesn't
20 necessarily mean you can do that. You can say, I was in the
21 hospital. I don't know whether Ms. Barr is going to object
22 because there's already been testimony that you were in
23 Philadelphia before and after the murder. There has -- and
24 your mother testified that she doesn't know where you were
25 on the day of the murder, whether you were in Philadelphia

1 or in South Carolina, that's what she said. I don't whether
2 Ms. Barr will object. She may strategically think that
3 those documents help her.

4 BAILIFF: All the jury's here, Your Honor.

5 THE COURT: We'll discuss that after your
6 stepfather's testimony because the jury is here and I
7 promised them we would start on time.

8 DEFENDANT MOSELEY: Okay.

9 THE COURT: Now, are you ready to present your
10 stepfather's testimony?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: Okay. Ms. Barr, is the State ready?

13 MS. BARR: Yes, Your Honor.

14 THE COURT: All right. You may bring in the jury.

15 (Whereupon, the jury returned to the
16 courtroom at 1:45 p.m.)

17 THE COURT: All right. We're ready to continue,
18 ladies and gentlemen.

19 Mr. Moseley, you may call your next witness.

20 DEFENDANT MOSELEY: Yes, I would like to call Mr.
21 Jessie Smith.

22 THE COURT: Mr. Smith, yes, sir, Mr. Smith.

23 THE CLERK: Place your left hand on the Bible,
24 raise your right hand.

25 THEREUPON,

JESSIE SMITH DIRECT BY MR. MOSELEY

1 JESSIE SMITH,

2 after having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box,
4 please.

5 THE COURT: And, Mr. Smith, is your first name
6 J-E-S-S-I-E OR E?

7 THE WITNESS: It's spelled with an I.

8 THE COURT: With an I, I-E?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right.

11 Mr. Moseley.

12 MS. BARR: Judge, I don't think he heard.

13 THE COURT: Oh.

14 Whenever you're ready, Mr. Moseley. Take your
15 time.

16 DEFENDANT MOSELEY: Yes.

17 (pause.)

18 DIRECT EXAMINATION

19 BY DEFENDANT MOSELEY:

20 Q. Mr. Smith, could you state for the record your
21 relationship to me?

22 A. Stepfather.

23 Q. And how long have you been married to my mother?

24 A. About 18 years.

25 Q. Eighteen years. Isn't it true that in late 2000, I had

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 to be carried by my mother to Philadelphia to live with
2 my aunt due to mental health issues?

3 A. Yes, sir.

4 Q. Can you explain to the jury my state of being at that
5 time?

6 A. I would say mentally sick.

7 Q. Was I really able to function or take care of myself?

8 A. No.

9 Q. From that -- isn't it true, from that date or period of
10 time to approximately May 2001, that's where I was at,
11 Philadelphia, in and out of the hospital?

12 A. Yeah, right.

13 DEFENDANT MOSELEY: No further questions.

14 THE COURT: Ms. Barr.

15 MS. BARR: No questions, Judge.

16 THE COURT: All right. You can step down. Thank
17 you, Mr. Smith.

18 Can I see Mr. Moseley, you and Ms. Barr for just a
19 minute.

20 (Whereupon, a bench conference was held
21 off the record, in the presence of the
22 jury, but out of the hearing of the
23 jury.)

24 THE COURT: Mr. Moseley, you can call your next
25 witness.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 DEFENDANT MOSELEY: Yes, sir. I would like to
2 call Mr. Coker back to the stand.

3 THE COURT: Mr. Coker, you can have a seat in the
4 witness chair. You are still under oath.

5 REBUTTAL EXAMINATION

6 BY DEFENDANT MOSELEY:

7 Q. Mr. Coker, during your investigation of this crime, did
8 you learn that anybody left the scene with a blood
9 shirt with braids and gold teeth?

10 (There was no response.)

11 MS. BARR: Judge, just so we're clear and I
12 protect myself on the record, to the extent that the answer
13 calls for hearsay, then we would, certainly, object to that.

14 THE COURT: All right. Mr. Moseley?

15 DEFENDANT MOSELEY: I just wanted a yes or no to
16 the question. I mean, because if it's hearsay, then me
17 being here is hearsay leading them to me, if that's the
18 case, sir.

19 THE COURT: All right. I will sustain the
20 objection to the extent it would cause the witness to
21 testify what someone else may have told him unless it was
22 you or another defendant about themselves. Okay?

23 DEFENDANT MOSELEY: So I have to rephrase the
24 question?

25 THE COURT: Yes, sir, rephrase the question,

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 please.

2 BY DEFENDANT MOSELEY:

3 Q. In your investigation, did you learn that anyone left
4 the scene with a bloody T-shirt?

5 MS. BARR: Judge, that would be the same question.
6 The same objection.

7 THE COURT: The objection is sustained.

8 All right. Ladies and gentlemen, if would you,
9 please, go to your jury room. You may not discuss the case.
10 (Whereupon, the jury left the courtroom
11 at 1:53 p.m.)

12 THE COURT: All right. Mr. Moseley, I believe you
13 have been educated now on what hearsay is. There -- there's
14 a rule against hearsay. There are exceptions to it.
15 Sometimes what a witness says is not hearsay. There is some
16 legal training necessary to learn that, however, we cannot
17 continue to send the jury in and out so that I can educate
18 you again on what hearsay is. So what I want you to do is
19 ask the witness the question. He can answer it. I can
20 determine one, if it is hearsay, two, if it falls within an
21 exception.

22 So, please, Investigator Coker, did you learn at
23 any time during your investigation from any source
24 whatsoever that somebody with a bloody shirt and gold teeth
25 and braids left the scene? That would be a yes or no.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 THE WITNESS: I actually do not recall.

2 DEFENDANT MOSELEY: Okay.

3 THE COURT: All right. Would your notes help you?

4 THE WITNESS: I -- I read over most of my notes
5 and the notes in the case file and I don't remember seeing
6 that in there.

7 THE COURT: Now, if a witness came running up in
8 an excited manner, Investigator Coker, Investigator Coker, I
9 just saw a man with a bloody shirt, braids and gold teeth
10 running away from the scene, that is what you call an
11 excited utterance. I would let that in, but there has to be
12 a foundation laid. So the witness says he can't recall.
13 You may ask the witness is there anything in your notes that
14 would refresh your recollection.

15 BY DEFENDANT MOSELEY::

16 Q. Is there anything in your notes that would refresh your
17 recollection, sir?

18 A. No, sir, not that I went over earlier and looked over.
19 I did not see anything.

20 Q. I have documentation attesting to that, that you took
21 that I'm attempting to find now.

22 DEFENDANT MOSELEY: I don't know whether I have to
23 show it to you, Your Honor, I just wanted to ask a question.
24 But be that the person is not here, I'm quite sure I cannot
25 go into it.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 THE COURT: Who is the person?

2 DEFENDANT MOSELEY: Mr. Ijel York. I have the
3 testimony that he made to him (indicating).

4 THE COURT: Mr. Who?

5 DEFENDANT MOSELEY: Ijel York, the victim's
6 brother.

7 THE COURT: How do you spell that?

8 DEFENDANT MOSELEY: I-J-E-L.

9 THE COURT: I never heard that name, but that
10 doesn't mean anything.

11 DEFENDANT MOSELEY: I have the document. I'm
12 going to find it. He told him allegedly --

13 THE COURT: Do you remember talking to Mr. Ijel
14 York?

15 THE WITNESS: I do not, Your Honor. Not saying I
16 didn't, but I --

17 THE COURT: Do you a copy of his statement,
18 Ms. Barr?

19 DEFENDANT MOSELEY: I'm attempting to find it now,
20 sir.

21 THE COURT: All right. First one to find it,
22 please, hand it up to the witness. And what I will have to
23 do from this point forward is rule, unless someone ask me
24 for the opportunity to make a proffer because we've -- we
25 are losing traction here.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 (pause.)

2 THE COURT: Somebody surely has it.. Does anybody
3 have the statement?

4 MS. BARR: And, Judge, I'm --

5 DEFENDANT MOSELEY: I got it from the State, sir.

6 THE COURT: Well, if you've got it, then it's up
7 to you to find it.

8 DEFENDANT MOSELEY: That's what I'm attempting to
9 do now, sir. I hate I --

10 THE COURT: Well, we had roughly an hour during
11 lunch for you to be prepared for it.

12 DEFENDANT MOSELEY: I had it hooked up to the
13 document and moved it around when I gathered my stuff, sir,
14 so it's my fault, sir.

15 THE COURT: Ms. Barr, do you have it tabbed?

16 DEFENDANT MOSELEY: It's a handwritten statement.

17 MS. BARR: I don't have it tabbed.

18 THE COURT: Do you have it, you think?

19 MS. BARR: Yes, I've seen it.

20 THE COURT: Of course, it's not your
21 responsibility to have it to assist the Defendant, I'm just
22 trying to --

23 MS. BARR: Save time.

24 THE COURT: To make best use of our time.

25 (Pause.)

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 THE COURT: We've going to move on. If you can't
2 find it, you can't find it. You have to be prepared. I
3 can't send the jury out for you to find it. All right.

4 MS. BARR: Judge, it appears there's reference
5 made to it in a statement to Agent Flamini. The statement
6 is of a Decema, D-E-C-E-M-A, Wallace, dated 4/29/2003. Page
7 3 of that she indicates Wallace -- Tory York for the murder
8 because publically a witness stated that the last person she
9 saw on the porch at Tory York's residence matched the
10 description of Tony York, an individual with braids in his
11 hair and gold teeth. Wallace denied it and told me that
12 Tony York had blood on his shirt the day of Tory's murder.

13 THE COURT: Okay.

14 Is that what you're talking about, Mr. Moseley?

15 DEFENDANT MOSELEY: Here it is, sir. I --

16 THE COURT: All right. Hand it to me and let me
17 look at it.

18 DEFENDANT MOSELEY: I can't present that because
19 you said she's not here. But I do know about that, sir. So
20 that's what I was attesting to in that document there, sir.

21 MS. BARR: And, Judge, I believe that might have
22 been the statement of Mr. Flamini as opposed to Mr. Coker.

23 THE COURT: This says statement given to
24 Investigator Coker by somebody named Ijel Quinia York.

25 All right. This statement was given October 30,

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 2001, seven months and one week after the murder. If you
2 want to ask the witness the question, I'll -- but we're
3 going to do it quickly and efficiently and then I'm going to
4 rule and then we'll bring the jury in.

5 DEFENDANT MOSELEY: Okay. So we asking --

6 THE COURT: Ask him now.

7 DEFENDANT MOSELEY: Okay.

8 BY DEFENDANT MOSELEY:

9 Q. Can you please read the underlined part at the bottom
10 and the top of the second page -- matter of fact, read
11 the whole paragraph.

12 DEFENDANT MOSELEY: Just the main issues, sir?

13 THE COURT: You're questioning him, not me.

14 BY DEFENDANT MOSELEY::

15 Q. Okay. Would you read the whole paragraph?

16 THE COURT: The whole statement?

17 DEFENDANT MOSELEY: It's going back attesting that
18 I ain't had nothing do with this and this is coming from the
19 victim's brother, sir.

20 THE COURT: Do you want him to read the entire
21 statement?

22 DEFENDANT MOSELEY: Could he do it now, so you
23 can -- yes, sir, yes, sir.

24 THE COURT: I'm trying to clarify the question.

25 DEFENDANT MOSELEY: Yes, sir.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 THE COURT: So what were you asking him to do?

2 DEFENDANT MOSELEY: Asking him to read the whole
3 statement, sir.

4 THE COURT: Out loud or to himself?

5 DEFENDANT MOSELEY: Out loud.

6 THE COURT: All right. Go ahead. Read slowly for
7 the court reporter.

8 THE WITNESS: Yes, sir.

9 About 6:30 p.m. on Friday, I went to Tory's house.
10 This was the same Friday that Tory was killed. When I got
11 to his house, Edwin and Irwin Scott's white car was on the
12 side of the house. When I walked in Edwin and Irwin Scott,
13 Carlos and Tony York, Phillip Gadson and Tory York were
14 there. They were arguing at Tory about some money. I saw a
15 gun on the coffee table. It was black and silver. And Tony
16 grabbed it and said it was his. Tory gave me seven dollars
17 to get my hair cut as I was leaving. I saw Little Dew and
18 Little D pull up in the green expedition. This is Little
19 D's Expedition, the one with bars over the grill. Don
20 Burgess was in the back seat.

21 I went and got my hair cut and then went to
22 Friarson Holmes. I was at Friarson Holmes about 10 to 15
23 minutes when I heard some -- when I heard some shots coming
24 from Thorn Avenue. I went toward Thorn Avenue and as I was
25 down in the valley on Lawrence Street, I saw the green

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 Expedition pass on Thorn Avenue headed toward Kelly's store.

2 About a week later, I was over in Park Circle when Andy

3 White walked up and said, I need to talk to your people.

4 And I said, About what? He said that on the night Tory was

5 shot, Tony ran to his house with a bloody shirt on and said

6 -- let's see, with a bloody shirt on and said, Give me a

7 shirt to Andy.

8 Q. Did you question Mr. Andy White?

9 A. Not that I'm aware of. I don't recall.

10 Q. And what would be the reason for not questioning him

11 when this is the victim's little brother, sir?

12 A. Actually, I didn't recall talking to this York person

13 until I actually seen the statement.

14 Q. So that's not valid to your recollection? He did tell

15 you that?

16 A. Yes, he did. I'm just saying when you asked me

17 earlier.

18 Q. Okay.

19 A. I wasn't aware of it.

20 Q. Okay. Why didn't you lead up and investigate this?

21 This is the victim's little brother telling you my

22 cousin -- somebody said my cousin was there after this

23 and this same cousin's description is gold teeth and

24 long braids?

25 A. We did --

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 Q. I mean, because --

2 A. We did investigate everybody that we got names of that
3 came up.

4 Q. So you -- so you telling me that was not probable cause
5 or proper for an arrest, but probable cause for arrest
6 was the proffer deal of Lonnie Dozier, that's what
7 you're saying? Your choice two different hearsay
8 testimony then?

9 A. No, this was not probable cause to go arrest Tony York.

10 Q. So probable cause for Lonnie Dozier was --

11 THE COURT: All right. Any additional questions
12 about the statement? That's what I want to deal with here,
13 the objection about the statement.

14 Ms. Barr, your objection is hearsay?

15 MS. BARR: Double hearsay, Judge, yes.

16 THE COURT: All right. Yes, your response.

17 DEFENDANT MOSELEY: I don't see this as hearsay,
18 sir.

19 THE COURT: It's an out-of-court statement made by
20 Ijel York offered to prove the truth of the matter asserts,
21 that is that Tony York ran from the scene with a bloody
22 shirt. Now, if Ijel York was here, you could ask Ijel York
23 these questions, but you cannot get it in through this
24 witness. It is hearsay. All right. Questions about why
25 they didn't investigate Tony York would necessarily stem

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 back to the content of this statement and other hearsay
2 evidence, so that question would likewise be improper.

3 But, again, Ijel York could have been here. I
4 don't know if it's a male or female or where that person
5 might be. The person could have been subpoenaed. If they
6 are here, they can testify in a few minutes.

7 So any other matters you want to put on the record
8 about that statement, Mr. Moseley, then we're going to bring
9 the jury in.

10 DEFENDANT MOSELEY: No, because -- that was the
11 original reason. I knew that being that Mr. Ijel is not
12 here that I couldn't bring that to him, but I wanted him to
13 attest that he had knowledge of it, that's why I asked did
14 you hear of anybody in your investigation with a bloody
15 shirt.

16 THE COURT: And that is hearsay.

17 DEFENDANT MOSELEY: Yes, sir. That's why I ask
18 him. So I can't ask him --

19 THE COURT: No, sir.

20 DEFENDANT MOSELEY: Leave that issue alone?

21 THE COURT: Now, if Ijel York had testified about
22 all this, then maybe you might be able to say hey, why
23 didn't you look into old Tony, you might be able to do that,
24 but not -- you've got to build your blocks with that.

25 DEFENDANT MOSELEY: Yes, sir.

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 THE COURT: Okay. All right. You can bring --
2 Ma'am?

3 MS. BARR: Judge, before we bring the jury back
4 in, I wanted to ask, may I ask the witness about this whole
5 notion about the Defendant's competency, particularly as it
6 related to there being made a judicial finding that he was
7 competent to stand trial?

8 THE COURT: Which witness?

9 MS. BARR: Investigator Coker.

10 THE COURT: That would be hearsay.

11 MS. BARR: It's court ordered, Your Honor.

12 THE COURT: But what's this witness have to do
13 with it?

14 MS. BARR: Well, Your Honor, would you consider
15 instructing the jury that there's been a finding --

16 THE COURT: Well, I will consider that later, but
17 I am not going to allow that to come in through this
18 witness.

19 MS. BARR: Okay.

20 THE COURT: All right. Now, you can bring in the
21 jury.

22 (Whereupon, the jury returned to the
23 courtroom at 2:08 p.m.)

24 THE COURT: Mr. Moseley.

25

SHANNON COKER REBUTTAL BY MR. MOSELEY

1 BY DEFENDANT MOSELEY:

2 Q. How did you get ahold to the information of Mr. Demtric
3 Mack?

4 A. How did I get information about Demtric Mack?

5 Q. Yes, his testimony statement?

6 A. I can't, actually, recall who originally interviewed
7 Mr. Demtric Mack.

8 Q. So you don't know if he was given a time cut or no deal
9 due because he was in for kidnapping and armed robbery
10 at the time? You don't know whether that came into
11 play?

12 A. I'm not sure. I have no idea.

13 Q. Okay.

14 DEFENDANT MOSELEY: I have no further questions.

15 THE COURT: Ms. Barr.

16 MS. BARR: No questions, Your Honor.

17 THE COURT: Thank you, sir. You can step down.

18 All right. Your next witness, Mr. Moseley? You
19 need to have a bench conference?

20 DEFENDANT MOSELEY: Yes, sir.

21 THE COURT: All right. Come on up, please.

22 (Whereupon, a bench conference was held
23 off the record, in the presence of the
24 jury, but out of the hearing of the
25 jury.)

1 THE COURT: All right. Ladies and gentlemen, I
2 will again ask you to step to your jury room and not discuss
3 the case.

4 (Whereupon, the jury left the courtroom
5 at 2:11 p.m.)

6 THE COURT: Okay. Put on the record what we
7 discussed, Mr. Moseley, you had asked me to hold off -- or
8 allow you to call a witness tomorrow by the name of
9 Birdie --

10 DEFENDANT MOSELEY: No, Birdie Ann Williams.

11 THE COURT: Birdie Ann Williams tomorrow. You
12 said she's in Florence, is that correct?

13 DEFENDANT MOSELEY: Yes, sir.

14 THE COURT: Okay. She could be here today. It's
15 10 after two. I'm not going to continue this trial over
16 into tomorrow for her to be called. She could have been
17 here today. As I mentioned on Monday, I would sign any
18 subpoena and enforce subpoena that would get a witness here
19 that you wanted here.

20 Now, that brings us to any additional witnesses
21 you might call other than yourself. Would there be any?

22 DEFENDANT MOSELEY: No, sir.

23 THE COURT: Okay. Have you made your decision as
24 to whether or not you will or will not testify?

25 DEFENDANT MOSELEY: In regards to -- in regards to

1 these documents, I would have to testimony.

2 THE COURT: And the documents -- when you say
3 these documents, as I mentioned, they must be stapled
4 together and marked for ID so that the record will show what
5 these documents are. So if you would, hand those to the
6 officer and they will be stapled. You can hand them up to
7 me first.

8 And the yellow sheet, is that your handwriting?

9 DEFENDANT MOSELEY: Yes, sir, that's my
10 declaration of service saying I have a copy. I did it last
11 night.

12 THE COURT: All right. I'll staple all of this
13 together.

14 All right. The first question is, Ms. Barr, will
15 you object -- and I will just go over what these say. These
16 will be Defendant's No. 4 for ID. It contains an
17 attestation from him that he -- that these documents are
18 conclusive evidence that he was living in another state with
19 mental health issues before, during and after the crime.

20 Now, one document is dated December 14, 2000, an
21 appointment notice for the Department of Public Welfare in
22 Philadelphia. Friday, January 19, 2001, same thing, and a
23 bill of some sort from Albert Einstein Medical Center,
24 Belmont-Willow Crest, admission date April 11, 2001,
25 discharge April 25, 2001. And lastly, a document -- or

1 letter to Mr. Moseley from the district manager of the
2 social security administration dated May 1, 2001,
3 referencing attached form. Of course, the forms aren't
4 attached, but it references the forms that were attached to
5 the letter.

6 I'm going to ask the court reporter to put a
7 sticker on this packet and let me Ms. Barr look at it and,
8 first of all, advise whether or not she has any objections.

9 (Defendant's Exhibit No. 4 was marked
10 for identification.)

11 MS. BARR: Beg the Court's indulgence, Your Honor.
12 (pause.)

13 Judge, the -- there are portions of the exhibit
14 that the State objects to and portions that we may not
15 object to. The first two that Your Honor referenced about
16 the Department of Welfare appointment dates, we would object
17 to those. Obviously, if someone has an appointment,
18 obviously, that doesn't mean that that person came to the
19 appointment. Plus, obviously, there are foundation issues
20 that relates to getting in those particular statements.

21 Judge, we would object to the last page, which is
22 the social security administration letter, dated May 1,
23 2001. Your Honor, with regard to the statement of --

24 THE COURT: The objection to the May 1 letter is
25 based on hearsay?

1 MS. BARR: Yes, sir.

2 THE COURT: Okay. How about the bill?

3 MS. BARR: Judge, I think provided he lays the
4 proper foundation for that, I don't think I would have an
5 objection to the bill.

6 THE COURT: How about the cover -- yellow cover
7 sheet, his attestation?

8 MS. BARR: Yes, I would object to that as well.

9 THE COURT: All right.

10 Mr. Moseley, the State objects to your appointment
11 notice and verification checklist for your appointment dated
12 of December 14, 2000, your appointment dated January 19,
13 2001, and that your -- or the letter dated May 1, 2001, from
14 Ms. Dee Merit, the district manager of social security
15 administration.

16 The State also says if you lay the proper
17 foundation, they would not object to the bill showing that
18 you were hospitalized from April 11 to April 25.

19 Your response?

20 DEFENDANT MOSELEY: Sir, the document dated
21 12/14/2000 has my signature at the bottom that I made that
22 appointment. Those two documents have my signature that I
23 made the appointments, sir.

24 THE COURT: Well, the signature --

25 DEFENDANT MOSELEY: It's attesting I was there,

1 sir, because at the top --

2 THE COURT: All right. This is January and
3 December. The murder occurred two and three months later.

4 DEFENDANT MOSELEY: Yes, sir.

5 THE COURT: What's the relevance of these --

6 DEFENDANT MOSELEY: The relevance is this also
7 goes to my alibi evidence, sir, that I was in Philadelphia
8 at the time. And while I was there, I was in and out of
9 hospitals. I was also attempting to gain government funds,
10 sir. You got to apply for stamps. You got to apply for
11 insurance, Medicaid, then you apply for your is SSI
12 benefits, sir. These documents are attesting to that I was
13 there attempting to get my life in order, sir. And my
14 declaration of service is my sworn statement that these are
15 my documents, sir.

16 THE COURT: But you didn't create the documents.

17 DEFENDANT MOSELEY: No, sir. I mean --

18 THE COURT: They're --

19 DEFENDANT MOSELEY: They're authentic.

20 THE COURT: They're out-of-court statements made
21 by other people to prove that you were Philadelphia?

22 DEFENDANT MOSELEY: Yes, sir.

23 THE COURT: All right.

24 Ms. Barr, are they hearsay? Are they offered to
25 prove -- well, are they offered to prove that he was in

1 Philadelphia on March 23?

2 MS. BARR: I don't think that's why he's offering
3 them. I think he's offering them to prove that he was in
4 Philadelphia from December of 2000 through May of 2001.

5 THE COURT: Of course, one of his witnesses says
6 not continuously.

7 MS. BARR: Right.

8 THE COURT: All right. I'm going to allow the
9 documents. I'm not going to allow this yellow sheet.

10 DEFENDANT MOSELEY: Okay.

11 THE COURT: Your testimony will be your
12 attestation, if you will.

13 DEFENDANT MOSELEY: Oh, okay.

14 THE COURT: So I'm going to instruct the court
15 reporter to reattach Exhibit 4 for ID to the documents --
16 I'll call it 4A for ID and we'll leave 4 for ID on the other
17 sheet. 4A for ID will be the documents that I'm going to
18 allow in over the State's objection.

19 DEFENDANT MOSELEY: Yes, sir. Thank you.

20 THE COURT: The basis for my ruling is I'm
21 satisfied that the documents are authentic. The only
22 question that I have is what relevance they may have, but
23 Mr. Moseley wants to establish something with them. I'll
24 allow him to attempt to do it.

25 Can I bring in the jury, please?

1 DEFENDANT MOSELEY: Just one more question, sir.

2 So I get on the stand --

3 THE COURT: You're going to be sworn. You will be
4 able to testify to the jury. You will not, number one, be
5 entitled or allowed to make an argument to the jury about
6 any tactics of the police, any tactics of the prosecutor or
7 anybody else. You will not be allowed to refer to things
8 that other people have said either to you or to other
9 witnesses unless something falls within an exception to the
10 hearsay rule.

11 Now, Ms. Barr will be able to cross-examine you on
12 any relevant in this case even if you don't talk about it.
13 Now, that is -- you understand what I told you earlier about
14 your Fifth Amendment rights and the consequences of your
15 decision to testify, do you not?

16 DEFENDANT MOSELEY: Yes, sir.

17 THE COURT: All right. Okay. So when you come
18 in -- when the jury comes in, I will say Mr. Moseley, do you
19 have any additional witnesses and you may say I would like
20 to testify.

21 DEFENDANT MOSELEY: Yes, sir.

22 THE COURT: Or if you change your mind as they're
23 coming in, you can say I don't have any other witnesses.
24 That will be entirely up to you.

25 DEFENDANT MOSELEY: So if I don't testify, how do

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1 I show this to the jury?

2 THE COURT: You won't be able to.

3 DEFENDANT MOSELEY: Okay.

4 THE COURT: Unless you have somebody from the
5 hospital here. Okay? You ready for the jury?

6 DEFENDANT MOSELEY: Yes, sir.

7 THE COURT: All right. Ms. Barr?

8 MS. BARR: Yes, sir, State's ready, Your Honor.

9 THE COURT: Bring them in.

10 (The jury returned to the courtroom at

11 (Whereupon, the jury returned to the

12 courtroom at 2:22 p.m.)

13 THE COURT: Okay. Mr. Moseley, any additional
14 witnesses?

15 DEFENDANT MOSELEY: No, sir, Your Honor, but I
16 would like to take the stand myself, sir.

17 THE COURT: So you would like to testify. Come
18 forward and be sworn, sir.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 THEREUPON,

22 ARTHUR MOSELEY,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Okay. You can take your seat in the
25 witness stand.

ARTHUR MOSELEY DIRECT TESTIMONY

1 THE COURT: All right. Mr. Moseley, you can
2 present your testimony. Make sure you speak loudly for the
3 jury.

4 DEFENDANT MOSELEY: Jury, I have a set of
5 documents for y'all. They cannot state for a fact the
6 month -- the exact date for the crime that I was not there
7 at the scene, but they would attest to y'all that I was out
8 of state before and after, so y'all would have to assume
9 that I wasn't there. These documents --

10 THE COURT: Exhibit No. 4, you're offering that?

11 DEFENDANT MOSELEY: Yes, sir.

12 THE COURT: All right. And you can -- no, you
13 leave it all stapled together.

14 (Defendant's Exhibit No. 4 was admitted
15 into evidence.)

16 THE COURT: Ms. Barr, any and all objections are
17 noted.

18 MS. BARR: Yes, sir, Your Honor.

19 THE COURT: Okay. Now, you can testify about the
20 document. If you want to hand it to the jury and have them
21 look at it.

22 Ladies and gentlemen, if that is handed to you and
23 you look at it as Mr. Moseley is testifying, please, make
24 sure you continue to pay attention to his testimony. In
25 other words, don't be reading it and not listening. Okay.

ARTHUR MOSELEY DIRECT TESTIMONY

1 All right. You can hand it to the forelady.

2 Thank you.

3 DEFENDANT MOSELEY: As you can see, the first
4 document is a medical assisting document, dated December the
5 14th, at 10 a.m. This is approximately four months before
6 the crime. Keep in mind at this time that I'm disabled, not
7 in the right state of mind you have to live in the state and
8 city. In order to continue with these documents and --

9 MS. BARR: I'm sorry, I can barely hear.

10 THE COURT: You have to talk into the microphone.
11 It's on, you just need -- why don't you put the microphone
12 on the corner right there. Nope. There you go.

13 DEFENDANT MOSELEY: Okay.

14 THE COURT: That way, you can face the jury.

15 DEFENDANT MOSELEY: Yes. You can see that on the
16 top right on the first two pages that I was given another
17 appointment and on the bottom left is my signature that I
18 made the appointment there. The first page, I applied for
19 medical assistance. The second page, I made January 3rd,
20 2001, at 8:45 a.m, I applied for cash assistance and food
21 assistance being that I already had the medical assistance.
22 Now, this is one month after the -- a month and a half
23 before the crime.

24 The third document is from Albert Einstein
25 Hospital. It's April the 11th, 2001 to April 25th, 2001

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1 attesting that I was in there for 14 days. There was
2 another document I had and it's a bill from them dated and
3 it's attesting that this is 18 days after the crime and I'm
4 still in the Philadelphia since December of 2000.

5 The last document is dated May the 1st, 2001, a
6 letter from the social security people with some
7 applications that I had to sign to get my benefits, to get
8 the SSI check. Again, I cannot state that on the date they
9 are not saying that, but it's still going to show that
10 before and after the fact that I was in this state and this
11 city at the point in time.

12 THE COURT: Anything you want to testify to that
13 --

14 DEFENDANT MOSELEY: Yes.

15 THE COURT: I say anything, but you can testify to
16 the jury. Of course, any objections that are made, I will
17 rule upon them if and when they're made.

18 DEFENDANT MOSELEY: The statements pertaining to
19 Mr. Dozier getting on the stand and really being former
20 childhood friends was, basically, this, I think he got
21 caught up due to certain issues. I'm right there with him.
22 When Mr. Dozier got locked up -- he was on his way to my
23 house in Florence. I had just came back, got out of jail,
24 this is 2002 him. Me and Corey Liner was together, I hooked
25 them up with a couple females that stay down the street from

ARTHUR MOSELEY DIRECT TESTIMONY

1 me in West Florence. And they way they got caught, pulled
2 over and got locked up. It was then that I saw Corey Liner
3 on the news. Liner and his girlfriend at the time -- they
4 was on the news for robbing -- High Fashion in Lexington
5 County. I did not know about that at the time, but they was
6 coming visiting me being I just came back and got out of
7 jail. And I was known to be going to clubs. And whoever
8 came from Kingstree I knew, I introduced them to friends and
9 all of that stuff.

10 I was finally getting in tune with myself again.
11 So I sent them like 20, 30 dollars a piece, that's all I
12 could do for them. And I guess there's some kind of
13 hardship and he implicated me. But we were childhood
14 friends, I'm going to attest to that. I don't feel what
15 they doing to me is right, but, you know, some people you
16 can help all your life and behind the scene, they can hit
17 you, you know. As my mother attested, Corey Liner, I moved
18 him in my house when I was 15. My mother wasn't going to
19 allow this. I had to attest he showed up with a T-shirt on
20 and some old shoes and socks and shorts with a broomstick
21 with a sheet with clothes standing like this (indicating), I
22 need to have a place to stay. His family in Washington at
23 that time was beating him up --

24 MS. BARR: Judge, we're going to object --

25 THE COURT: Ma'am?

ARTHUR MOSELEY DIRECT TESTIMONY

1 MS. BARR: We're going to object to this line of
2 testimony as being irrelevant.

3 THE COURT: All right. Overruled.

4 Go ahead. You can continue.

5 DEFENDANT MOSELEY: Basically, we allowed him in
6 and take care of him. Through high school and all, I've
7 always been the one whereas people looked up if they needed
8 help, et cetera, et cetera. I never joined a gang or
9 nothing. You know, I went to school in Kingstree, stayed
10 in -- my father died and we moved to White Oak community. I
11 went to -- school at that time. Like a year or two later, I
12 came back and went to junior high school in Kingstree. So
13 when I went to senior high, former friends that was still
14 friends of mine that I know in Kingstree when I was in
15 elementary and all beating up little home boys that I knew
16 from the community, so I always had to defend people, et
17 cetera, et cetera, so everybody looked up to me. Like a big
18 brother, they can always come to me. So these same
19 codefendants of mine, I reached out and helped them -- it's
20 really sad, but this is how some people do you at time --

21 THE COURT: All right. That's argument. You can
22 testify to facts, okay. You can argue those --

23 DEFENDANT MOSELEY: That's, basically, what
24 happened and why they are labeling me as such and such, but
25 as you can tell how the eyewitness said I was not there.

ARTHUR MOSELEY CROSS BY MS. BARR

1 The eyewitness sat up here and stated two people in the car,
2 white car, white interior, one got out, braids, whatever to
3 shoulder length. Within 10 seconds, there was the shots.
4 Two people, nobody else in the car, which is -- and he was
5 sitting -- standing right behind the car, so that showed
6 that the testimony Dozier did was not consistent with his
7 because Dozier said there was three people, et cetera.

8 That's, basically -- I wanted to get on the stand
9 and tell y'all the truth of the matter itself because you
10 might be persuaded to see certain things. I know that I
11 might object, they might object. There's certain documents
12 that y'all can't see and certain issues I can't talk about,
13 but y'all have -- state one thing or whatever. I just
14 wanted to get up here and tell you myself because I didn't
15 have to do this. I wanted to do this because my life is on
16 the line and I'm trying to get back home to my 15-year-old
17 daughter. I been locked up a year before this case. Being
18 that I was in the hospital at the time -- bench warrant.

19 MS. BARR: Judge, we're going to object.

20 THE COURT: All right. That's not relevant.

21 Anything about a bench warrant is not relevant.

22 DEFENDANT MOSELEY: Basically, that's all I wanted
23 to say to the jury. And I thank y'all.

24 THE COURT: Cross-examination, Ms. Barr.

25 Has the jury finished looking at the document?

ARTHUR MOSELEY CROSS BY MS. BARR

1 You've still got it, okay. And, again, ladies and
2 gentlemen, as you look at the document, continue to listen
3 to the testimony.

4 Ms. Barr, you can cross-examine the witness.

5 MS. BARR: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. BARR::

8 Q. Mr. Moseley, just to be clear, none of the documents
9 that you have given to the jury will say that you were
10 in the State of Philadelphia on the day of March 23rd,
11 2001, is that correct?

12 A. Yes, and I stated that to them.

13 Q. Now, you're not telling them, though, that were not in
14 the State of South Carolina during the month of March,
15 2001, are you? You're not saying that, are you?

16 A. Say that again now.

17 Q. You're not telling them that you were not in the State
18 of South Carolina during the month of March 2001, the
19 month that the victim got killed?

20 A. Okay. The month of that documentation as I
21 explained --

22 Q. No, no, I'm not talking about documentation. Period,
23 you're own testimony, are you telling this jury that
24 you were not in the State of South Carolina during the
25 month that the victim got killed, is that what you're

ARTHUR MOSELEY CROSS BY MS. BARR

- 1 telling them?
- 2 A. Yes, sir.
- 3 Q. No doubt in your mind at all?
- 4 A. From my recollection.
- 5 Q. You bet your life on it?
- 6 A. I said from my recollection, ma'am.
- 7 Q. Okay. So is it possible then that you could have been
- 8 here or are you telling us --
- 9 A. I mean, if you've got documentation showing I was and
- 10 can present it, ma'am.
- 11 Q. Okay. Now, you would agree with your mom that you were
- 12 kind of back and fourth during that time frame, right?
- 13 A. Yes.
- 14 Q. Okay. And during the time that Tory was killed, your
- 15 girlfriend had a black Pontiac, didn't she?
- 16 A. No.
- 17 Q. She didn't?
- 18 A. No, ma'am.
- 19 Q. She had a Pontiac vehicle, though, didn't she?
- 20 A. She had a Grand Am Pontiac.
- 21 Q. Okay. What color was it?
- 22 A. Light green.
- 23 Q. Green?
- 24 A. Light green.
- 25 Q. Light green?

ARTHUR MOSELEY CROSS BY MS. BARR

- 1 A. Yes.
- 2 Q. Okay. And did you hear the witness testify about a
3 green vehicle in the driveway, did you hear the witness
4 say that?
- 5 A. The witness stated a white car with white interior.
- 6 Q. That's what you heard?
- 7 A. That's what he stated on the stand.
- 8 Q. All right. Now, your girlfriend was living on
9 in Florence at the time?
- 10 A. .
- 11 Q. All right. Now, as it relates to all of your
12 testimony, your claims about having mental illness,
13 now, of course, you've been evaluated for mental
14 illness, right?
- 15 A. Yes, I've been evaluated.
- 16 Q. And you've been evaluated for your competency to stand
17 trial, haven't you?
- 18 A. Yes, by State people.
- 19 Q. Yes. You were evaluated in 2002, is that correct?
- 20 A. I went to several hospitals, ma'am.
- 21 Q. Yes, sir.
- 22 A. I don't know if they evaluate you on each.
- 23 Q. Well, let me --
- 24 A. I went to several hospitals.
- 25 Q. Well, let me ask you this, were you evaluated by the

ARTHUR MOSELEY CROSS BY MS. BARR

- 1 hospital in Columbia, the Department of Mental Health
2 in June of 2002 for your competence?
- 3 A. Yes, I was. That's when I --
- 4 Q. All right.
- 5 A. The year I spent in the county for taking that charge
6 for Corey Liner.
- 7 Q. You were determined to be competent, weren't you?
- 8 A. Yes, because I was on for a blue light -- release in 90
9 days and when I was released, I had a max of three
10 years suspended to two years probation and 90 days
11 house arrest.
- 12 Q. All right. And as it relates to this particular case,
13 you were evaluated for your competency on this case,
14 weren't you?
- 15 A. Yes, by the State.
- 16 Q. That was done in August of this -- just this past year,
17 right?
- 18 A. Yes, ma'am.
- 19 Q. You were determined to be competent at that point,
20 weren't you?
- 21 A. Because Judge Newman stated I have to be competent in
22 order for this to lift the bench warrant.
- 23 Q. But Mr. Moseley, Judge Newman didn't evaluate you, did
24 he?
- 25 A. I know, but he stated that I'm not lifting your bench

ARTHUR MOSELEY CROSS BY MS. BARR

1 warrant --

2 Q. I'm not talking about a bench warrant, I'm not talking
3 about anything like that.

4 A. Okay.

5 Q. I'm talking about your evaluation?

6 A. The whole point of the evaluation was this, Judge
7 Newman stated due that I was locked up for being in the
8 hospital that he's not satisfied with the hospital --

9 Q. You can't tell me what Judge Newman stated, okay?

10 A. This --

11 Q. Here's my question, it's very simple, very simple, you
12 were evaluated by a medical doctor or by a psychologist
13 in August of 2013, were you not?

14 A. Yes.

15 Q. And it was the opinion of that person that you were
16 competent to stand trial, correct?

17 A. Yes.

18 Q. And during the time in 2002 and from that point on, you
19 told your doctors that you were suicidal at times,
20 right?

21 A. Yes, I received no medication.

22 Q. You told your doctors from 2002 onward that you were
23 homicidal at times, didn't you?

24 A. Yes.

25 Q. You decided to act on your homicidal tendencies back on

ARTHUR MOSELEY CROSS BY MS. BARR

- 1 March 23rd, 2001?
- 2 A. No, I wasn't here.
- 3 Q. You weren't here. Let me ask you this, you
- 4 testified Corey Liner and Lonnie Dozier were childhood
- 5 friends of yours?
- 6 A. They were.
- 7 Q. Y'all hung out together, were at each other's house
- 8 right?
- 9 A. No. I never been to Dozier's house.
- 10 Q. All right.
- 11 A. They just childhood friends that looked up to me. I
- 12 helped in certain situations.
- 13 Q. Dozier ever been to your house?
- 14 A. Dozier been to my house probable once or twice in his
- 15 whole life. My mom didn't play people coming to the
- 16 house. Corey Liner was an exception.
- 17 Q. So you were closer to Corey Liner than you were to
- 18 Lonnie Dozier, right?
- 19 A. Yes.
- 20 Q. Hold on. Hold on.
- 21 A. Yes, yes.
- 22 Q. Let's do it this way. When I ask a question, if you
- 23 will give me the respect of letting me finish my
- 24 question, I'll give you the respect of letting you
- 25 finish your answer, fair enough?

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- 1 A. Okay. That's fair enough.
- 2 Q. All right. You would have been closer to Corey Liner
3 during this time than you were to Lonnie Dozier,
4 correct?
- 5 A. During our whole life?
- 6 Q. Well, during your whole life in general, yes, correct?
- 7 A. Yes, ma'am, I would assume so.
- 8 Q. And during 2001, you would have been closer to Corey
9 Liner than you would have been to Lonnie Dozier,
10 correct?
- 11 A. I left the hospital because of Corey Liner.
- 12 Q. So is the answer to my question yes, you would have
13 been closer in 2001 --
- 14 A. Yes.
- 15 Q. -- to Corey Liner?
- 16 A. Yes.
- 17 Q. Now, did you have any bad blood with you and Corey and
18 Lonnie back in 2001?
- 19 A. No, ma'am, the documentation that I cannot present --
- 20 Q. Well, don't tell me about documentation you can't --
21 here's my question.
- 22 A. I'm answering your question now. I had no bad blood
23 with them. I left due to certain things that they told
24 me to do.
- 25 Q. All right.

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- 1 A. I left the hospital.
- 2 Q. And you were so close to them that you claimed you
3 would take a rap for them for something thing you
4 didn't do, right, that's how close you were to them,
5 right?
- 6 A. That's what I did for Corey with the car speeding
7 thing.
- 8 Q. They look up to you, right?
- 9 A. Yes.
- 10 Q. You were friends with Demtric Mack, right?
- 11 A. Never was.
- 12 Q. Never was friends?
- 13 A. Never was a friend really to Demtric Mack.
- 14 Q. Well, didn't you ask him when he was on the witness
15 stand whether or not he had been at your house in 2012?
- 16 A. Yes, yes.
- 17 Q. You remember asking him that?
- 18 A. Yes.
- 19 Q. And his response was yes, wasn't it?
- 20 A. Yes.
- 21 Q. Okay. So, I mean, y'all were, at least, on decent
22 terms as far as you knew, right?
- 23 A. He kicks it with my brother, not me. He's not on my
24 level.
- 25 Q. Not on your level?

ARTHUR MOSELEY CROSS BY MS. BARR

- 1 A. Yes.
- 2 Q. Okay. When you talk about your so-called mental
3 illness, I noticed that when you mentioned you were
4 hospitalized, it's shortly after you've been accused of
5 a crime, isn't that normally how it worked?
- 6 A. No.
- 7 Q. All right. Well, the murder of Tory York happened in
8 March of 2001, correct?
- 9 A. Yes, that's what it says.
- 10 Q. In April of 2001, according to you, you were in the
11 hospital, correct? Is that right?
- 12 A. Yes.
- 13 Q. Then you talk about this period of hospitalization
14 where you were evaluated in 2002, right?
- 15 A. You talked about that.
- 16 Q. Well, I mean you confirmed that, right, you were
17 evaluated for competency --
- 18 A. Yes.
- 19 Q. -- in 2002, right?
- 20 A. (The witness nodded head.)
- 21 Q. Is that right?
- 22 A. Yes, because I was in the county jail and needed
23 competency.
- 24 Q. All right. So you're in the county jail. We know that
25 you were -- in 2002, you hadn't been charged with this

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1 murder, right? We know that, right?

2 A. Keep in mind, you said every time it's because I'm
3 charged with a crime. I wasn't charged with no crime
4 when I was hospital for that incident there.

5 Q. No --

6 A. That's what you stated.

7 Q. No, no.

8 A. Just want you to know that, ma'am.

9 Q. Here's my specific question so that I'm clear about
10 what I'm asking, okay?

11 A. Yeah.

12 Q. In 2002 when you were evaluated for competency, you
13 said that you were in jail, correct --

14 A. Yes.

15 Q. -- during that time? And that was -- that was
16 something completely unrelated to the murder charge
17 because you had not been charged with that murder yet,
18 correct?

19 A. Yes.

20 Q. All right. So presumably, you're in a jail for a crime
21 and you have whatever and then you have to end up going
22 to the hospital, correct?

23 A. They sent me to hospital for evaluation.

24 Q. All right. And the time that you were last in the
25 hospital in October, I believe it was the 29th of 2012,

ARTHUR MOSELEY CROSS BY MS. BARR

1 that was the last time you were in the hospital, right?

2 A. Yes, ma'am.

3 Q. And October 29th, 2012, wasn't that the date that you
4 were scheduled to go to trial on this case?

5 A. Scheduled for role call that I had no knowledge of.

6 Q. Well, how do you know if you were scheduled for role
7 call that you have no knowledge of when you just
8 testified that you were supposed to be here?

9 A. Because my mother called on the 30th and told the
10 doctors to call y'all. And I have documentation to
11 that and they sent y'all the fax and you still locked
12 me up and I'm still locked up for that. That's what I
13 was trying to explain to them, but you didn't want me
14 to tell them that.

15 Q. Okay. Well, I mean -- and you can tell them,
16 certainly, also, can't you, that at that time in
17 October 2012, you were homicidal and suicidal, right?

18 A. Yes.

19 Q. Okay.

20 A. Can I tell them, also, why I went in, what lead me to
21 going in?

22 Q. Well --

23 THE COURT: You can explain your -- you can
24 explain your answer.

25 DEFENDANT MOSELEY: I can?

ARTHUR MOSELEY CROSS BY MS. BARR

1 THE COURT: Explain it, yes, sir.

2 DEFENDANT MOSELEY: Yes, I must have left that
3 out. Being that I just moved back to White Oak, I went out
4 with some friends on Thorn Avenue. I hadn't been home in a
5 wheel, kicked it with some people and had a drink or two. I
6 left and I came back and I was with a friend of mine and we
7 decided to leave and meet up some place else being that I
8 haven't been home, I don't stay around here. So here it is,
9 this young dude I don't know from Adam and Eve comes out and
10 says why you keep looking at me? You been looking at me all
11 night.

12 MS. BARR: Judge, I'm still going to object to
13 hearsay.

14 THE COURT: Okay. You can testify in general in
15 explanation of -- in answering the question about why you
16 went into the hospital in October of 2012 and then y'all can
17 move on.

18 DEFENDANT MOSELEY: Eventually, the dude pulled
19 out a gun and Charles --

20 THE COURT: All right. So --

21 DEFENDANT MOSELEY: So I ran, he shot at me four
22 times. I slipped and fell and he robbed me of 200-dollars.

23 THE COURT: All right.

24 Go ahead, Ms. Barr, next question.

25 DEFENDANT MOSELEY: That's why --

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1 THE COURT: Next question.

2 BY MS. BARR:

3 Q. And, sir, you've conveniently managed to arrange to be
4 hospitalized every time you get in some legal trouble
5 and you also get a lot of benefits by claiming that you
6 have mental illness, don't you?

7 A. I went in the hospital because I was traumatized. You
8 haven't even investigated that case yet. And it was a
9 911 call, ma'am.

10 Q. No, my question was --

11 A. Tell them that, too.

12 Q. You get benefits --

13 A. Yes, it --

14 Q. -- by claiming you have a mental illness, right?

15 A. I get legal benefits because they say that I am legally
16 disabled, ma'am. Your state says that I'm not because
17 they get funded for me to go to court. Y'all get
18 funded every time we go to jail, ma'am. Let them know
19 that, too.

20 Q. You get social security disability benefits?

21 A. Yes, I get disability right now.

22 Q. You get Medicaid?

23 A. Yes.

24 Q. Correct? You were getting food stamps, correct?

25 A. Yes.

ARTHUR MOSELEY CROSS BY MS. BARR

1 Q. You were getting all of that?

2 A. Yes, I still am.

3 Q. So it's, certainly, in your best interest, you want to
4 keep getting those things, don't you?

5 A. I haven't had a job since this crime in 2006, ma'am. I
6 was working at Dixie Cup making 10-dollars an hour when
7 y'all charged me with this frivolous crime, ma'am. I
8 haven't had a job since and I've been in and out of
9 hospitals since then, ma'am. What do want me to do,
10 rob people and stuff to feed my family?

11 THE COURT: Let's not argue. It's a question and
12 answer exchange.

13 Ms. Barr, next question.

14 BY MS. BARR:

15 Q. You, certainly, want to continue to get the benefits
16 that you're getting, right? You want to continue
17 getting your social security, right?

18 A. As long as they state that I'm legally disabled to get
19 benefits, they will give it to me. I was -- before
20 y'all arrested me, I was in a program with vocational
21 rehab to where they was training me to go to school and
22 all that stuff.

23 Q. Mr. Moseley, please, just tell me yes or no. You want
24 to continue getting those benefits, right?

25 A. Until I'm able to work, et cetera and get jobs, et

ARTHUR MOSELEY CROSS BY MS. BARR

1 cetera, yes.

2 Q. Okay.

3 A. I would have to.

4 Q. And it's, certainly, in your best interest to continue
5 to portray yourself as suffering from a mental illness
6 so that you can continue getting your benefits, right?

7 A. I don't portray nothing, ma'am. I take on --
8 Risperdal -- I take these medications, ma'am. A
9 doctor's not going to prescribe me that. You're not a
10 doctor. Keep that in mind, Ms. Solicitor.

11 THE COURT: All right. Don't argue, okay.

12 Next question.

13 BY MS. BARR:

14 Q. Just one quick follow-up question. You mentioned
15 earlier during your direct testimony that the
16 eyewitness, Mr. Chandler, was standing behind the
17 vehicle and saw an individual with dreads and gold
18 teeth, is that right, is that what you said earlier?

19 A. Yes, he said he got out the passenger seat and within
20 10 seconds shots. Only two people, that's what he
21 attested to, was in that car. He could not see the one
22 driving, but he was sitting -- standing behind the car
23 after he got his lighter.

24 Q. How did you know where he was standing?

25 A. He stated this on the stand, ma'am.

ARTHUR MOSELEY REDIRECT TESTIMONY

1 Q. You sure about that?

2 A. He stated he was standing behind the vehicle. He could
3 not see who was driving. And he said he got a -- I
4 don't know who he got the lighter from, whether it was
5 the victim or whoever got out, I can't attest to that,
6 I forgot. I didn't write down all of it.

7 Q. Let me ask you this, you would agree with me that if
8 these fellows, Corey Liner and Lonnie Dozier and
9 Demtric Mack are your home boys or your childhood
10 friends or whatever, if they wanted to, they really
11 could have just picked anybody in the world to accuse
12 of committing this crime, couldn't they? I mean,
13 really, couldn't they?

14 A. I don't know Demtric Mack like that. He was never an
15 associate of mine. And as I explained to the jury,
16 they had some kind of issue with me being there. They
17 was locked up, coming to my house. I didn't go see
18 them or nothing. I sent them a little money. I didn't
19 have no bond money for them or nothing. This is when
20 they made those statements, several months after they
21 was locked up.

22 Q. Let me just make sure --

23 A. That's when they made the statement.

24 Q. Let me make sure I'm clear. You would have this jury
25 believe that Lonnie Dozier came in here perjured

ARTHUR MOSELEY REDIRECT TESTIMONY

1 himself just because you didn't come see him?

2 A. Yeah.

3 Q. Is that your testimony?

4 A. I mean, on his transcript he says one thing and on the
5 stand, he says something else. So he did that. They
6 see that.

7 MS. BARR: Judge, that's all the questions I have.

8 THE COURT: All right.

9 Anything else you would like to tell the jury on
10 redirect?

11 DEFENDANT MOSELEY: Yes, sir.

12 REDIRECT EXAMINATION

13 DEFENDANT MOSELEY: Y'all have to keep in mind,
14 she mentioned about me wanting to be competent. I had to be
15 competent for him to lift the bench warrant. Then they
16 turned around and the competency was for a trial, which I
17 didn't mind, but due to other issues I cannot, motion to
18 dismiss --

19 I cannot go into that, can I, sir?

20 THE COURT: Don't ask me ahead of time. If you
21 testify and there's an objection, I'll rule on it. I'm not
22 going to rule on anything in advance.

23 DEFENDANT MOSELEY: This whole issue she was
24 talking about with the competency of last year, August of
25 2013, the judge stated that he's not going to --

ARTHUR MOSELEY REDIRECT TESTIMONY

1 MS. BARR: Judge, I'm going to object to what the
2 judge would have stated.

3 THE COURT: Ma'am?

4 MS. BARR: I'm going to object to what a judge
5 would have stated based no hearsay.

6 THE COURT: Now, you would not be able to testify
7 what a judge stated or what a judge would state. All right.

8 DEFENDANT MOSELEY: All right.

9 THE COURT: Objection sustained.

10 DEFENDANT MOSELEY: I had to get this evaluation
11 in order to get out because the documents were sent to the
12 State that from Mr. Dennis -- on the 30th of October that I
13 was in here. I cannot make role call. I had no knowledge
14 of this role call. Me and Mr. Verdell Barr, may he rest in
15 peace, at the time hadn't even talked since 2009. That's
16 the last time he had role call for me on this case.

17 Now, within that period of time, he took himself
18 off the case. They appointed me Amanda Shuler. She would
19 not get this evaluation. She would not do my motion to
20 dismiss, my motion to excuse the judge. She would not do
21 none of that that was entitled to me by speedy trial act
22 because per indictment today, I'm not supposed to be charged
23 with this.

24 THE COURT: All right. No comments about legal
25 points.

LEWELLYN JORDAN DIRECT BY MS. BARR

1 DEFENDANT MOSELEY: Sorry about that.

2 THE COURT: You can testify to facts concerning
3 this case and any other relevant matters pertaining to that.

4 DEFENDANT MOSELEY: Okay. So I did a grievance
5 and hired another attorney. We saw things different ways.
6 Nobody wanted to get a bench warrant or do these motions.
7 So a week before y'all was presented, I had to represent
8 myself in order for my motion to dismiss would be heard,
9 which was denied. Now, you see me here representing myself
10 in trial. That's how I got to be where I am at this point
11 in time today in front of all. That's all I would have to
12 say.

13 THE COURT: Anything else, Ms. Barr?

14 MS. BARR: No, Your Honor.

15 THE COURT: Thank you, Mr. Moseley. You can step
16 down.

17 DEFENDANT MOSELEY: Thank y'all for y'all time.

18 THE COURT: All right. Mr. Moseley, any
19 additional witnesses?

20 DEFENDANT MOSELEY: No, sir.

21 THE COURT: All right.

22 Mr. Moseley has rested. Any reply from the State?

23 MS. BARR: Yes, sir.

24 THE COURT: You may call your witness.

25 And I will note for the record any and all motions have been

LEWELLYN JORDAN DIRECT BY MS. BARR

1 made hat the close of defendant's case and we'll revile have
2 that in just a few minutes Ms. Bar.

3 MS. BARR: Thank you. We call Lewellyn Jordan.

4 THE COURT: Come on up, Mr. Jordan.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 THEREUPON,

8 LEWELLYN JORDAN,
9 after having been duly sworn, testified as follows:

10 THE COURT: And I will note for the record that
11 any and all motions have been made at the close of the
12 Defendant's case and we will review all that in just a few
13 minutes.

14 DIRECT EXAMINATION

15 BY MS. BARR::

16 Q. Good afternoon, Mr. Jordan.

17 A. Good afternoon.

18 Q. Sir, state your full name for us and spell your first
19 name.

20 A. My full name is Lewellyn Jordan. The spelling of my
21 first name is L-L-E-W-E-L-L-Y-N.

22 Q. All right. And, sir, you are currently retired?

23 A. Yes, ma'am, I am.

24 Q. All right. And what was your occupation prior to
25 retirement?

LEWELLYN JORDAN DIRECT BY MS. BARR

- 1 A. I was a police officer.
- 2 Q. Where?
- 3 A. In the City of Florence.
- 4 Q. All right. Were you working as a police officer back
- 5 in March of 2001?
- 6 A. Yes, ma'am, I was.
- 7 Q. And how long have you been in law enforcement?
- 8 A. At that point in time -- I finished about 24 years and
- 9 11 months --
- 10 Q. Okay.
- 11 A. -- of service, so I got hired in October of 1987 and
- 12 retired September 12th, 2012.
- 13 Q. All right. Now, sir, did you come from Florence County
- 14 this morning for the trial of this case?
- 15 A. Yes, ma'am, I did.
- 16 Q. And about how long did it take you to get here?
- 17 A. It's 35 miles from my residence to the courtroom, so,
- 18 roughly, about 45 minutes to an hour.
- 19 Q. Were you working back on the late night, early morning
- 20 hours of March 17th of 2001?
- 21 A. Yes, ma'am, I was.
- 22 Q. What were your responsibilities that day?
- 23 A. At that point of my career, I was sergeant in charge of
- 24 traffic division.
- 25 Q. And what were your primary responsibilities?

LEWELLYN JORDAN DIRECT BY MS. BARR

1 A. Traffic enforcement, accident investigation, check
2 points.

3 Q. Okay.

4 A. Car baby seats, things of that nature.

5 Q. All right. Now, in your capacity as a police officer
6 back on March 17, 2001, did you have an occasion to
7 come in contact with an Arthur Renault Moseley?

8 A. Yes, ma'am, I did.

9 Q. Tell us about that.

10 A. I was out running stationary radar when I estimated a
11 vehicle coming up behind me at a speed of 66 miles per
12 hour in a 40 mile per hour zone. I activated my radar
13 and confirmed the speed at 65 miles per hour. I then
14 pulled in behind the vehicle and I got the impression
15 that he was attempting to elude me on West Lucas Street
16 in the City of Florence. As he was traveling, he
17 turned left on Chase Street at a high rate of speed and
18 made a very dangerous passing of another vehicle. And
19 I continued behind him and finally made a traffic stop.
20 I conducted a traffic stop of Mr. Moseley at

21

22 Q. Approximately, what time of day or night was this?

23 A. This was about 12:42 a.m.

24 Q. Okay. All right. And you said -- I'm sorry, you said
25 you made a traffic stop on him where?

LEWELLYN JORDAN DIRECT BY MS. BARR

- 1 A. In the 500 block of .
- 2 Q. .?
- 3 A. That's correct.
- 4 Q. What type of vehicle was Mr. Moseley driving at the
- 5 time?
- 6 A. It was a black Pontiac.
- 7 Q. Okay. Now, he was later arrested?
- 8 A. Yes, ma'am. When I asked him for his documentation to
- 9 operate a motor vehicle in the State of South Carolina,
- 10 he presented me with a South Carolina ID card.
- 11 Q. Okay.
- 12 A. Typically, sometimes folks have drivers license that
- 13 are suspended. I ran his driver license -- or his ID
- 14 number and it came back to a suspended South Carolina
- 15 driver's license.
- 16 Q. All right. Sir, I'm going to hand you what's been
- 17 marked for identification purposes as State's Exhibit
- 18 No. 6 and ask you if you would recognize those
- 19 documents?
- 20 A. Yes, ma'am, I do.
- 21 Q. Okay. And what are they?
- 22 A. These are uniform traffic tickets or citations.
- 23 Q. Okay. And are they uniform traffic tickets that you
- 24 wrote to Arthur Renauld Moseley back on March the 17th
- 25 of 2001?

LEWELLYN JORDAN DIRECT BY MS. BARR

1 A. Yes, ma'am, they are.

2 Q. All right.

3 MS. BARR: Your Honor, permission to admit into
4 evidence. I've given Mr. Moseley a copy.

5 THE COURT: Any objection, Mr. Moseley?

6 DEFENDANT MOSELEY: No, sir.

7 THE COURT: All right. No. 6. How many pages is
8 that?

9 MS. BARR: Three pages.

10 THE COURT: Six is in without objection.

11 (State's Exhibit No. 6 was admitted into
12 evidence.)

13 MS. BARR: Permission to publish, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. BARR:

16 Q. Your last rank with the City of Florence Police
17 Department was lieutenant?

18 A. Yes, ma'am.

19 Q. Okay. Would you step down, please, for me?

20 A. (Witness complies.)

21 THE COURT: Are you placing No. 6 on the screen?

22 MS. BARR: Yes, Your Honor.

23 THE COURT: Mr. Moseley, you have that in front of
24 you? You have a copy?

25 DEFENDANT MOSELEY: (The witness nodded head.)